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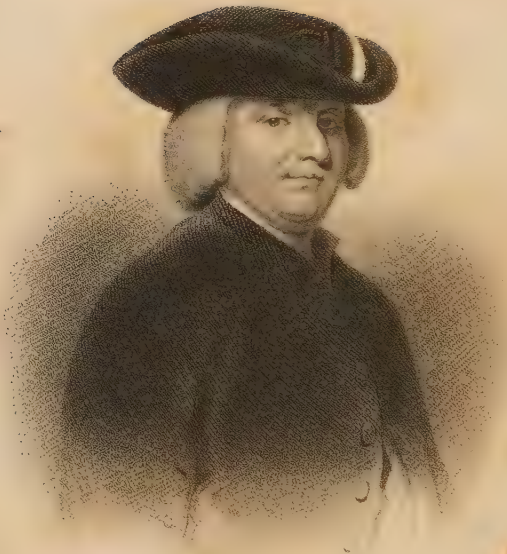

WILLIAM PALEY, D.D.

Engraved for the Edition of 'English' Literature by Freeman.

PALEY'S

MORAL AND POLITICAL

PHILOSOPHY.

CONDENSED

UNDER THE SUPERINTENDENCE OF

A. J. VALPY, M. A.

LONDON:
PRINTED BY A. J. VALPY,
AND SOLD BY ALL BOOKSELLERS.
1831.

'Paley's Moral and Political Philosophy is a masterly and inimitable work. He had many points of resemblance to Socrates: the philosophy of both was common sense, and their study human nature.'—Quarterly Review, vol. ix.

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ADVERTISEMENT.

MUCH as we owe to the invention of printing, its good is not entirely without alloy. From the facilities it presents to the rapid march of mind, books are multiplied as if by magic; but at the same time the sterling works of each successive age are thus, from the want of leisure to read them, rapidly displaced by literature of a lighter cast, whose aim it is 'to play round the heart, but never reach the head.'

To divert in part the interest felt for such productions, it is intended to publish, in a *concentrated form*, a Series of STANDARD ENGLISH AUTHORS; of whose works the present generation know little, and the rising youth must know less; although the names, at least, of such writers are 'familiar in our mouths as household words,' and the information they convey, suited to all times, places, and conditions of men, is clothed in language, which has of necessity remained stationary, whilst modes of thinking and writing have insensibly changed.

But though powerful in mind and rich in matter are the writers of England's proudest period, still they are

all deficient in the one thing needful—brevity; and thus the very points, on which they plumed themselves in their own days, have led to their present partial neglect. Ever more afraid of saying too little than too much, they have imposed on posterity the task of pruning luxuriances and removing blemishes, by the rejection of what is superfluous in matter and quaint in style; but not without the double advantage on our part of retaining all that is useful, and of imparting a new interest to it by the system of CONCENTRATION.

Of the value of such a principle the best proof is given by the unimitated and inimitable authors of Greece and Rome. Varied as their works are in subject and style, they all unite in the leading point, to give the *maximum* of information in the *minimum* of space, and have thus been able, independent of their intrinsic value, to outlive not only the darker ages, but to throw a lustre even on more enlightened times.

The Series will be confined to the popular productions of writers in Prose, and the following Authors will be first selected:

HISTORICAL.	PHILOSOPHICAL.	MISCELLANEOUS.
BURNET.	BACON.	ADDISON.
CLARENDON.	LOCKE.	GOLDSMITH.
GIBBON.	PALEY.	JOHNSON.
HUME.	&c.	MILTON.
ROBERTSON.		SWIFT.
&c.		&c.

Thus much was stated in general terms respecting the object of this undertaking in the original Prospectus. But precluded, as we then were, from entering on it in detail, we gladly seize the opportunity, on the publication of the first volume, to explain more fully both what has now been done, and what it is intended to do hereafter.

We have, then, condensed *Paley's Moral Philosophy* into about one half of the original work; where not only are all the arguments of Paley preserved in their native force, but even his very words, as often as they seemed to convey his ideas in the best, because most concise, manner. Nor is this its only merit; for, wherever a link has been found deficient or defective in the Author's chain of reasoning, we have endeavored to supply the one and repair the other; but never without duly noticing such necessary interpolations, by placing them within brackets. Further, we have deemed it requisite to give Paley's own words in the notes, whenever we doubted whether we had correctly expressed his meaning in the text. Lastly, such notes have been added, as were rendered necessary by the changes which have taken place in the legislature since Paley's time.

With respect to the plan to be hereafter pursued, the same principle will be adopted of preserving in works of Philosophy the whole pith of the argument, and even the language of the author, if suited to the

system of condensation exhibited in the present volume. On the other hand, in *Historical* works it will be our design to preserve all the facts, and as much of the reflections of the author, as cannot be omitted, with justice to the writer or reader.

In the case of *Clarendon* however, a greater licence will be taken than with *Hume* and *Gibbon*—a licence perfectly justifiable, from the impossibility of making, by any other means, a writer so prolix at all palatable to modern readers. Still, as enough will be preserved of the author in those graphic descriptions of scenes, which only an eye-witness could portray, the reader will find nothing to regret either of matter or manner.

Although such are our present intentions, we are still free to adopt either an enlargement or contraction of the plan; especially in authors, whom we have classed under the head of *Miscellaneous*, where so wide a field is open for difference of opinion.

London, March, 1831.

On the 1st of May will be published, in Vol. II., *Paley's Evidences of Christianity*, with *Locke on the Human Understanding;* and on the 1st of June will be published, Vol. III. of the *Philosophical* Series, as also the first Volume of the *Historical* and *Miscellaneous* Series.

BIOGRAPHICAL SKETCH

OF

DR. PALEY.

THIS distinguished writer was the eldest son of the Rev. W. Paley, the descendant of an ancient family settled in Craven, in Yorkshire. Appointed a minor canon of Peterborough, he resided in that city until he was chosen head master of Giggleswick school, in Yorkshire. Before he left Peterborough, he married, in 1742, Elizabeth Clapham, of Stackhouse, in the parish of Giggleswick.

The subject of this sketch was born at Peterborough, in July, 1743, and educated at his father's school. Although his talents as a boy were vigorous, and he sought with avidity every opportunity to gain information by reading, he had little to distinguish him from his schoolfellows, except a disposition to wit and banter, which remained with him, though under control, in after-life.

On November 16, 1758, in his sixteenth year, he was admitted a sizer of Christ's College, Cambridge; and between the interval of his admission and resi-

dence there, in the October term following, he was placed under the care of Mr. W. Howarth, of Ditchford, Yorkshire, to improve him in the knowlege of algebra and geometry; subjects no less congenial to the bent of Paley's mind, than suited to the studies of the university.

But little as others might have seen in young Paley, his father appears to have formed a juster opinion of his talents. 'My son,' said he, 'is now gone to college: he'll turn out a great man—very great indeed. I am certain of it; for he has by far the clearest head I ever met with in my life.' In the same year he was appointed to one of the scholarships at his college belonging to Giggleswick school, and obtained the exhibition founded by Sir Walter Mildmay; and in May, 1761, was elected to the Buntry scholarship.

During the first two years of Paley's residence at Cambridge, he applied himself to mathematical studies, and attended lectures in logic, metaphysics, and moral philosophy, in which the doctrines of Locke, Clarke, and Hutcheson were discussed.

His manners and conversation were so agreeable to his fellow-collegians, that he was frequently interrupted in his course of study. But while thus pleasing others, he was not, it would seem, equally pleased with himself, as may be gathered from the interesting anecdote he related to a friend, in 1795, while conversing on this part of his college life:—

'I spent the first two years of my undergraduateship,' said he, 'happily, but unprofitably. I was constantly in society, where we were not immoral, but

idle, and rather expensive. At the commencement of my third year, however, after having left the usual party at rather a late hour in the evening, I was awakened at five in the morning by one of my companions, who stood at my bed-side, and said, 'Paley, I have been thinking what a fool you are. I could do nothing, probably, were I to try, and can afford the life I lead: you could do every thing, and cannot afford it. I have had no sleep during the whole night on account of these reflections, and am now come solemnly to inform you, that if you persist in your indolence, I must renounce your society.' I was so struck with the visit and the visitor, that I lay in bed great part of the day, and formed my plan. I ordered my bed-maker to prepare my fire every evening, in order that it might be lighted by myself. I arose at five; read during the whole of the day, except during such hours as chapel and hall required, allotting to each portion of time its peculiar branch of study; and just before the closing of the gates, (nine o'clock) I went to a neighboring coffee-house, where I constantly regaled on a mutton-chop and a dose of milk-punch. And thus, on taking my bachelor's degree, I became senior wrangler.'

After taking his bachelor's degree, Paley was employed as second, and shortly after, as first assistant in an academy at Greenwich; a situation he no doubt felt irksome, from having to teach Greek and Latin; to which he felt such an aversion, that he used to say 'Virgil was the only Latin poet he could read with satisfaction.'

In 1765, Paley gained the first of the prizes given annually by the representatives of the university of Cambridge to senior bachelors for the two best dissertations in Latin prose. To the essay sent in by Paley were subjoined English notes. Hence, a suspicion arose that Paley was not the real author, nor was the prize adjudged to him, till the objection, grounded on that suspicion, was removed.

In the following year he relinquished his situation at Mr. Bracken's academy; but still remained at Greenwich as private tutor to the son of Mrs. Ord; and at the same time acted as curate in the parish.

In June of the same year, he was elected a fellow of his college, and took the degree of M.A.

In 1767, Paley went to reside at Cambridge as a private tutor, and was invested with certain offices worth about 80*l.* a year, and shortly after was ordained priest.

In 1768, Dr. Shepherd, sole tutor of Christ's, appointed Mr. Paley and Mr. John Law joint-assistant tutors, and by their exertions the reputation of the college was not a little increased; as the system of discipline and education which they adopted was such, as to improve the morals and the minds of their pupils, by presenting instruction in a form agreeable for the present and useful for the future.

In 1771, Paley was appointed one of the Whitehall preachers; and in the same year exhibited his zeal in the cause of religion by refusing to assist in passing the grace, as it is called, for enabling the celebrated John Horne Tooke, who was supposed to

have renounced all religion, to take his degree of M.A.

During the period of his situation as tutor at Christ's, Paley was engaged in laying the foundation for his future fame. His lectures on moral philosophy, the Greek Testament, and divinity, contained more than the mere outlines of his subsequent publications.

In 1772, Paley made his first appearance as a public character. A petition had been presented to parliament from certain members of the university of Cambridge, praying to be relieved from subscription to the thirty-nine articles of the Church of England. To that petition, though favorable in heart, he refused to put his hand, assigning as a reason, that 'he could not afford to keep a conscience.'

For his first preferment Paley was indebted to Law, bishop of Carlisle, the father of his joint-tutor, Law, who presented him, in 1775, to the rectory of Musgrave in Westmoreland, worth about 80*l.* a year.

In 1776, he preached for the last time at Whitehall chapel, and soon after quitted the university, having vacated his fellowship by marriage. At Musgrave, Paley attempted farming unsuccessfully. His favorite amusement was angling; and so partial did he become to this idle pastime, that when he sat, or rather stood, to Romney for his portrait, he desired to be drawn with his rod and line.

In the same year Paley was presented to the vicarage of Dalston in Cumberland, worth about 90*l.* a year; and in the following year resigned the rectory

of Musgrave, and was instituted to the vicarage of Appleby, estimated at 200*l.*, on the presentation of the dean and chapter of Carlisle. He now divided his time between Appleby and Dalston, residing alternately six months in each. It was during his residence at Appleby that he compiled and published 'The Clergyman's Companion in visiting the Sick,' of which the prefatory part is very valuable.

In 1780, he was preferred to a prebendal stall in Carlisle cathedral, worth about 400*l.* a-year; and in 1782 was appointed archdeacon of Carlisle, a kind of sinecure by which his clerical dignity and temporal income were equally increased. He then resigned Appleby; and in September of that year, accompanied his college-friend Law, promoted to the see of Clonfert in Ireland, to Dublin; where he preached the consecration sermon, published afterwards under the title of 'A Distinction of Orders in the Church defended on the principles of public Utility.' But though Paley handled the subject with ingenuity, and expressed himself with elegance, yet, like all moderate men, he pleased no party, either in or out of the church; as the first thought he conceded too much, and the other, not enough.

In 1785, his 'Principles of Moral and Political Philosophy' issued from the press. For this valuable work we are indebted to the solicitation of his friend the bishop of Clonfert, who frequently urged Paley to publish the lectures he had read to his pupils at Cambridge. At first Paley declined, fearful of the expense attendant on publication; but as soon as he

became possessed of a competency, he no longer refused, and in about two years afterwards so completed his manuscript, as never to require subsequently any alteration of importance.

Of this work, now so well known, the success was far greater, not indeed than its merits deserve, but than the author ever anticipated, as it presented nothing new as a whole, but merely in the skilful arrangement of the parts; while to a clearness of method, such a general precision of language and ingenuity, if not cogency of reasoning, are combined, as to render it a treatise adapted above all others to general use; as evinced by the references made to it in the senate, the pulpit, and the bar. That it is liable to cavil in some of its details, and even in its leading principle of expediency, may be admitted, without invalidating its utility as a code of ethics, more universal in its application than any of the systems of its opponents.[1]

[1] Of these opponents the following list has been given by Chalmers:—

1. Letters to William Paley, on his Objections to a Reform in the Representation of the Commons, and on his Apology for the influence of the Crown in Parliament. Published originally in the Gentleman's Magazine, and republished in 8vo. 1787—1796.

2. Principles of Moral Philosophy, investigated and briefly applied to the Constitution of Civil Society; together with remarks on the principle assumed by Mr. Paley, as the basis of all moral conclusions, and other positions of the same author, by Thomas Gisborne, M.A. 1789. 8vo.

3. Remarks on the Theory of Morals; in which is contained an examination of the theoretical part of Paley's Principles of Moral and Political Philosophy, by Edward Pearson, D.D. 1800. 8vo.

4. Annotations on the practical part of Paley's Principles, &c. by Edward Pearson, D.D. 1801. 8vo.

5. Observations on the Criminal Law of England, as it relates to Capital Punishments, and on the mode in which it is administered, by Sir Samuel Romilly, 1818. 8vo.

In 1785, on the death of Burn, the celebrated author of 'The Justice of Peace,' and 'Ecclesiastical Law,' he was appointed chancellor of the diocese of Carlisle, another considerable addition to his preferments, but which seemed only to invigorate him to fresh exertions in his profession; in proof of which he gave at Dalston a course of lectures on the New Testament on Sunday afternoons; and about the same time, while acting as examining chaplain to the bishop of his diocese, he republished Collyer's 'Sacred Interpreter,' for the use of candidates for deacon's orders; and to which he added a short analysis of the book of Revelation, taken chiefly from Bishop Newton's Dissertation and Daubuz's Commentary.

In 1788, Paley addressed a letter to the Society for the Abolition of the Slave-trade; and in the year following sent a short treatise to the Committee, containing 'Arguments against the unjust pretensions of slave-dealers and holders to be indemnified by pecuniary allowances at the public expense, in case the slave-trade should be abolished.' Of this treatise unfortunately no copy at present is known to exist.

In the year following Paley was offered the mastership of Jesus College, Cambridge, which he for some

To which may be added the objections started by—

1. Dugald Stewart, in his 'Elements of the Philosophy of Mind,' and in his 'Philosophy of the Active and Moral Powers of Man.'

2. Brown, in his 'Lectures on the Philosophy of the Human Mind.' Both of these authors have been recently combated by Wainewright, in his 'Vindication of Dr. Paley's Theory of Morals,' 1830. 8vo.

reason declined. Meadley, Paley's first and fullest biographer, attributes the refusal to Paley's opposition to the political principles of the then premier, Pitt. But as Paley himself has left no acknowleged record of the cause of his refusal, it is in vain to conjecture his motives, which were probably of a mixed kind, and amongst them one arising from an unwillingness to be the head of a college, of which he had not been previously a member. But whatever was the cause of the refusal, the effect was, in the opinion of Bishop Law, that Paley had missed a mitre.

In 1790, Paley published his 'Horæ Paulinæ, or the Truth of the Scripture History evinced by a Comparison of the Epistles, which bear his name, with the Acts of the Apostles, and with one another.' In this work Paley has exhibited an originality of thought, and a delicacy of discrimination, seldom, if ever, equalled by any writer on the subject of the evidences of Scripture truth; and though some have expressed surprise that Paley should totally neglect the Epistle to the Hebrews, such persons have only exhibited their own ignorance of sacred criticism, and of Paley's uniform determination, never to found an hypothesis, except on facts that do not, as the Epistle to the Hebrews does, admit of dispute. It may be more fairly urged against the work, that the coincidences, on which his theory rests, are occasionally too minute; yet even this proves only the superior acuteness of Paley's intellect, and cannot of itself invalidate his conclusions.

In the same year Paley delivered, and subsequently

printed, 'a Charge to the Clergy of the Diocese of Carlisle on the Use and Propriety of local and occasional Preaching;' in which he justly condemns, as highly improper, all reference to politics, as foreign to the religion and morality of the Gospel.

In 1791, he had the misfortune to be left a widower, with four sons and four daughters; and in the following year was presented, by the dean and chapter of Carlisle, with the vicarage of Addington, near Great Salkeld, worth about 140*l.* a year. In 1793, he was collated to the vicarage of Stanwix.

In 1794, Paley published his 'View of the Evidences of Christianity.' Of this, his most popular work, it may be said, that much as has been written on the subject, nothing has been written so well calculated for general utility. From the absence of all doctrinal discussions, it can be put into the hands of every believer in every sect of Christianity; and what is still higher praise, though it may not convert every infidel, it will make him far more ready than he was before to admit, that Christianity will require stronger arguments than a sneer to destroy its truth, or to interfere with its benign influence; nor is Paley's merit the less, in being able to effect, by a selection from the arguments of others, what they singly and united could not do.

Scarcely had the work appeared, before Porteus, then bishop of London, collated the author to the valuable prebend of St. Pancras, in the cathedral of St. Paul's; and shortly after, Tomline, bishop of Lincoln, presented him with the sub-deanery of that

diocese, worth about 700*l.* a year, on which he vacated the prebend of Carlisle; and after his installation as sub-dean of Lincoln, he proceeded to Cambridge to take his degree of D.D.

About the same time Barrington, then bishop of Durham, presented Paley with the rectory of Bishop Wearmouth, worth nearly 1200*l.* a year; on which he vacated Stanwix and Addingham, and the chancellorship of Carlisle; and for the remainder of his life divided his time between Lincoln and Bishop Wearmouth. At the latter place he put in practice the principle he had advocated in his Moral Philosophy, of relieving the weight of tithes as much as possible; and he accordingly granted to his parishioners leases for the term of his natural life, at a fair rate; and thus while he secured the good will of his flock, he had the greater happiness of finding their wealth increased by the great rise that shortly afterwards took place in all agricultural produce.

In December, 1795, Paley, then aged 52, took for his second wife a Miss Dobinson, of Carlisle; and in the year following, lost his mother, aged 83, and in 1799, his father, aged 88; both of whom thus lived to witness their son's celebrity, and to rejoice at his success.

In 1800, he was attacked by a complaint in the kidneys, accompanied with the black flux, which compelled him to forego the active discharge of his duties. From this period frequent returns of an excruciating disease gradually undermined his constitution; although he occasionally enjoyed intervals free

from pain; during which he indited his treatise on 'Natural Theology.' In this, as in his works on Philosophy and Christianity, he used the materials of others without scruple; but with such skill, that even they who complain of the inaccuracy of his anatomical knowlege, must confess, that had he known more, he could not have proved his point more satisfactorily; so little did the effect depend on the facts taken singly, but on their power when formed into one well-arranged whole; and, what is a peculiar charm in the work, though it speaks of matters fit only, at first sight, for scientific readers, it is brought fully down to the comprehension of those who have received but a moderate education.

In the commencement of the year 1805, Paley, while a resident at Lincoln, experienced a violent paroxysm of his disorder, which would not yield to the usual remedies; and, on his return to Bishop Wearmouth, he expired, on the 25th of May, in the 62d year of his age. He was interred in the cathedral of Carlisle, by the side of his first wife.

In person, Dr. Paley was above the middle size, and latterly inclined to corpulence. As in his domestic arrangements, and in his general habits of expense, he practised what may be called an enlightened economy, and observed a due medium between parsimony and profusion, his income was more than adequate to all his wants; and he left his family in easy if not affluent circumstances.

The excellence of the private life of Paley is attested by all who knew him. In the language of his

biographer, Meadley, 'he was a good husband, an affectionate father, an indulgent master, and a faithful friend. Though economical from habit and principle, he was at times generous in his pecuniary transactions, charitable to the poor, and especially to street beggars, on a principle developed by himself in his Moral Philosophy. Ever the more esteemed as he was the better known, (for he had none of that seeming virtue, which dazzles at a distance, but cannot bear a close inspection) he wanted no disguise, nor did he ever assume any; and thus, though his little defects struck more forcibly the common observer, he at the same time enabled his more intimate friends to discover under them the latent goodness of his heart.' To some of these defects, probably, allusion is made by a writer in the Quarterly Review, vol. IX. p. 399. who, when accounting for the apparently strange fact, that a man, who had done the church so much service as Paley had done, should die without a mitre, while men far inferior in talents have obtained the highest honors, observes, that, while 'a cloud of suspicion hung over Paley, and the prejudices of a great ecclesiastic obstructed his advancement—that the disappointment proceeded from the king himself. Homely truths about rulers, uttered in uncourtly language,[1] are no recommendations to high preferment: the peculiarities also of a man of genius

[1] The passage, to which the Reviewer alludes, may be found in the Moral Philosophy, book III. chap. 1. and which the king had in mind, when, on being asked to make Paley a bishop, he replied, 'What, what, pigeon Paley? no, no.'

render him less *producible;* and the jealousy of overbearing intellect, especially when directed to politics, leaves the way open to men of less talent, but more tact.'

In the spirit of the question, 'Who made thee a judge over thy fellows?' we refrain from inquiring into Paley's public character, except so far as his writings are concerned. If he be consistent there, his inconsistencies elsewhere, even if he exhibited any, will serve as food for the appetites of those alone who live but on scandal; and who, unable to reach the virtues of great men, endeavor to bring them down to their own puny standard, by exalting defects. Still less can it interest those who may read his works, and cannot read them without improvement, to hear that Paley differed from his clerical brethren in his wish to convert articles of faith into articles of peace.

Of his literary powers it may be said, that though they exhibited no proof of original genius or deep research, they can lay claim to the higher praise of making his fellow-men better and wiser on earth, and more assured in their hopes of the life to come.

TO THE RIGHT REVEREND

EDMUND LAW, D.D.

LORD BISHOP OF CARLISLE.

My Lord,

Had the obligations which I owe to your Lordship's kindness been much less, or much fewer, than they are; had personal gratitude left any place in my mind for deliberation or for inquiry; in selecting a name which every reader might confess to be prefixed with propriety to a work, that, in many of its parts, bears no obscure relation to the general principles of natural and revealed religion, I should have found myself directed by many considerations to that of the Bishop of Carlisle. A long life spent in the most interesting of all human pursuits—the investigation of moral and religious truth, in constant and unwearied endeavors to advance the discovery, communication, and success, of both; a life so occupied, and arrived at that period which renders every life venerable, commands respect by a title which no virtuous mind will dispute, which no mind sensible of the importance of these studies to the supreme concernments of mankind will not rejoice to see acknowleged. Whatever difference, or whatever opposition, some who peruse your Lordship's writings may perceive between your conclusions and their own, the good and wise of all persuasions will revere that industry which has for its ob-

ject the illustration or defence of our common Christianity. Your Lordship's researches have never lost sight of one purpose, namely, to recover the simplicity of the Gospel from beneath that load of unauthorised additions, which the ignorance of some ages, and the learning of others, the superstition of weak, and the craft of designing men, have (unhappily for its interest) heaped on it. And this purpose, I am convinced, was dictated by the purest motive; by a firm, and I think, a just opinion, that whatever renders religion more rational renders it more credible; that he who, by a diligent and faithful examination of the original records, dismisses from the system one article which contradicts the apprehension, the experience, or the reasoning of mankind, does more towards recommending the belief, and, with the belief, the influence of Christianity, to the understandings and consciences of serious inquirers, and through them to universal reception and authority, than can be effected by a thousand contenders for creeds and ordinances of human establishment.

When the doctrine of Transubstantiation had taken possession of the Christian world, it was not without the industry of learned men, that it came at length to be discovered, that no such doctrine was contained in the New Testament. But had those excellent persons done nothing more by their discovery, than abolished an innocent superstition, or changed some directions in the ceremonial of public worship, they had merited little of that veneration, with which the gratitude of Protestant churches remembers their services. What they did for mankind was this: they exonerated Christianity of a weight which sunk it. If indolence or timidity had checked these exertions, or suppressed the fruit and publication of these inquiries, is it too much to affirm that infidelity would at this day have been universal?

I do not mean, my Lord, by the mention of this example to insinuate, that any popular opinion which your Lordship may have encountered, ought to be compared with Transubstantiation, or that the assurance with which we reject that extravagant absurdity is attainable in the controversies in which your Lordship has been engaged; but I mean, by calling to mind those great reformers of the public faith, to observe, or rather to express my own persuasion, that to restore the purity, is most effectually to promote the progress of Christianity; and that the same virtuous motive which hath sanctified their labors, suggested yours. At a time when some men appear not to perceive any good, and others to suspect an evil tendency, in that spirit of examination and research which is gone forth in Christian countries, this testimony is become due, not only to the probity of your Lordship's views, but to the general cause of intellectual and religious liberty.

That your Lordship's life may be prolonged in health and honor; that it may continue to afford an instructive proof, how serene and easy old age can be made by the memory of important and well-intended labors, by the possession of public and deserved esteem, by the presence of many grateful relatives; above all, by the resources of religion, by an unshaken confidence in the designs of a 'faithful Creator,' and a settled trust in the truth and in the promises of Christianity, is the fervent prayer of,

My Lord,

Your Lordship's dutiful,

Most obliged,

And most devoted Servant,

William Paley.

Carlisle, Feb. 10, 1785.

THE

AUTHOR'S PREFACE.

In the treatises that I have met with on the subject of morals, I appear to myself to have remarked the following imperfections;—either that the principle was erroneous, or that it was indistinctly explained, or that the rules deduced from it were not sufficiently adapted to real life and to actual situations. The writings of Grotius, and the larger work of Puffendorff, are of too forensic a cast, too much mixed up with the civil law and with the jurisprudence of Germany, to answer precisely the design of a system of ethics,—the direction of private consciences in the general conduct of human life. Perhaps, indeed, they are not to be regarded as institutes of morality calculated to instruct an individual in his duty, so much as a species of law books and law authorities, suited to the practice of those courts of justice, whose decisions are regulated by general principles of natural equity, in conjunction with the maxims of the Roman code; of which kind, I understand, there are many on the continent. To which may be added, concerning both these authors, that they are more occupied in describing the rights and usages of independent communities, than is necessary in a work which professes not to adjust the correspondence of nations, but to delineate the offices of domestic life. The profusion also of classical quotations with which many of their pages abound, seems to me a fault from which it will not be easy to excuse them. If these extracts be in-

tended as decorations of style, the composition is overloaded with ornaments of one kind. To any thing more than ornament they can make no claim. To propose them as serious arguments, gravely to attempt to establish or fortify a moral duty by the testimony of a Greek or Roman poet, is to trifle with the attention of the reader, or rather to take it off from all just principles of reasoning in morals.

Of our own writers in this branch of philosophy, I find none that I think perfectly free from the three objections which I have stated. There is likewise a fourth property observable almost in all of them, namely, that they divide too much the law of Nature from the precepts of Revelation; some authors industriously declining the mention of Scripture authorities, as belonging to a different province; and others reserving them for a separate volume: which appears to me much the same defect, as if a commentator on the laws of England should content himself with stating on each head the common law of the land, without taking any notice of acts of parliament; or should choose to give his readers the common law in one book, and the statute law in another. 'When the obligations of morality are taught,' says a pious and celebrated writer, 'let the sanctions of Christianity never be forgotten: by which it will be shown that they give strength and lustre to each other: religion will appear to be the voice of reason, and morality will be the will of God.'[1]

The manner also in which modern writers have treated of subjects of morality is, in my judgment, liable to much exception. It has become of late a fashion to deliver moral institutes in strings or series of detached propositions, without subjoining a continued argument or regular dissertation to any of them. This sententious apophthegmatising style, by crowding propositions and paragraphs too fast on the mind, and by carrying the eye of the reader from subject to subject in too quick a succession, gains not a sufficient hold on the attention, to leave either the memory furnished, or the understanding satisfied. However useful a syllabus of topics or a series of propositions may be in the hands of a lecturer, or as

[1] Preface to 'The Preceptor,' by Dr. Johnson.

a guide to a student, who is supposed to consult other books, or to institute on each subject researches of his own, the method is by no means convenient for ordinary readers; because few readers are such thinkers as to want only a hint to set their thoughts at work on; or such as will pause and tarry at every proposition, till they have traced out its dependency, proof, relation, and consequences, before they permit themselves to step on to another. A respectable writer of this class[1] has comprised his doctrine of slavery in the three following propositions:—

'No one is born a slave; because every one is born with all his original rights.'

'No one can become a slave; because no one, from being a person, can, in the language of the Roman law, become a thing, or subject of property.'

'The supposed property of the master in the slave, therefore, is matter of usurpation, not of right.'

It may be possible to deduce from these few adages, such a theory of the primitive rights of human nature, as will evince the illegality of slavery; but surely an author requires too much of his reader, when he expects him to make these deductions for himself; or to supply, perhaps, from some remote chapter of the same treatise, the several proofs and explanations which are necessary to render the meaning and truth of these assertions intelligible.

There is a fault, the opposite of this, which some moralists who have adopted a different, and I think a better plan of composition, have not always been careful to avoid; namely, the dwelling on verbal and elementary distinctions, with a labor and prolixity proportioned much more to the subtlety of the question, than to its value and importance in the prosecution of the subject. A writer on the law of nature,[2] whose explications in every part of philosophy, though always diffuse, are often very successful, has employed three long sections in endeavoring to prove that 'permissions are not laws.' The discussion of this controversy, however essential it might be to dialectic precision, was certainly not necessary to the pro-

[1] Dr. Ferguson, author of 'Institutes of Moral Philosophy,' 1767.

[2] Dr. Rutherforth, author of 'Institutes of Natural Law.'

gress of a work designed to describe the duties and obligations of civil life. The reader becomes impatient when he is detained by disquisitions which have no other object than the settling of terms and phrases; and, what is worse, they for whose use such books are chiefly intended, will not be persuaded to read them at all.

I am led to propose these strictures, not by any propensity to depreciate the labors of my predecessors, much less to invite a comparison between the merits of their performances and my own; but solely by the consideration, that when a writer offers a book to the public, on a subject on which the public are already in possession of many others, he is bound by a kind of literary justice to inform his readers, distinctly and specifically, what it is he professes to supply, and what he expects to improve. The imperfections above enumerated are those which I have endeavored to avoid or remedy. Of the execution the reader must judge; but this was the design.

Concerning the principle of morals it would be premature to speak: but concerning the manner of unfolding and explaining that principle, I have somewhat which I wish to be remarked. An experience of nine years in the office of a public tutor in one of the universities, and in that department of education to which these chapters relate, afforded me frequent occasions to observe, that in discoursing to young minds on topics of morality, it required much more pains to make them perceive the difficulty, than to understand the solution: that, unless the subject was so drawn up to a point, as to exhibit the full force of an objection, or the exact place of a doubt, before any explanation was entered on,—in other words, unless some curiosity was excited before it was attempted to be satisfied, the labor of the teacher was lost. When information was not desired, it was seldom, I found, retained. I have made this observation my guide in the following work: that is, on each occasion I have endeavored, before I suffered myself to proceed in the disquisition, to put the reader in complete possession of the question; and to do it in the way that I thought most likely to stir up his own doubts and solicitude about it.

In pursuing the principle of morals through the detail of cases to which it is applicable, I have had in view to accommodate both the choice of the subjects and the

manner of handling them, to the situations which arise in the life of an inhabitant of this country in these times. This is the thing that I think to be principally wanting in former treatises; and perhaps the chief advantage which will be found in mine. I have examined no doubts, I have discussed no obscurities, I have encountered no errors, I have adverted to no controversies, but what I have seen actually to exist. If some of the questions treated of appear to a more instructed reader minute or puerile, I desire such reader to be assured that I have found them occasions of difficulty to young minds; and what I have observed in young minds, I should expect to meet with in all who approach these subjects for the first time. On each article of human duty, I have combined with the conclusions of reason the declarations of Scripture, when they are to be had, as of coordinate authority, and as both terminating in the same sanctions.

In the manner of the work, I have endeavored so to attemper the opposite plans above animadverted on, as that the reader may not accuse me either of too much haste, or too much delay. I have bestowed on each subject enough of dissertation to give a body and substance to the chapter in which it is treated of, as well as coherence and perspicuity: on the other hand, I have seldom, I hope, exercised the patience of the reader by the length and prolixity of my essays, or disappointed that patience at last by the tenuity and unimportance of the conclusion.

There are two particulars in the following work, for which it may be thought necessary that I should offer some excuse; the first of which is, that I have scarcely ever referred to any other book; or mentioned the name of the author whose thoughts, and sometimes, possibly, whose very expressions, I have adopted. My method of writing has constantly been this; to extract what I could from my own stores and my own reflections in the first place; to put down that, and afterward to consult on each subject such readings as fell in my way: which order, I am convinced, is the only one whereby any person can keep his thoughts from sliding into other men's trains. The effect of such a plan on the production itself will be, that, whilst some parts in matter or manner may be new, others will be little else than a repetition of the old. I

make no pretensions to perfect originality: I claim to be something more than a mere compiler. Much, no doubt, is borrowed; but the fact is, that the notes for this work having been prepared for some years, and such things having been from time to time inserted in them as appeared to me worth preserving, and such insertions made commonly without the name of the author from whom they were taken, I should, at this time, have found a difficulty in recovering those names with sufficient exactness to be able to render to every man his own.

Nor, to speak the truth, did it appear to me worth while to repeat the search merely for this purpose. When authorities are relied on, names must be produced: when a discovery has been made in science, it may be unjust to borrow the invention without acknowleging the author. But in an argumentative treatise, and on a subject which allows no place for discovery or invention, properly so called; and in which all that can belong to a writer is his mode of reasoning, or his judgment of probabilities; I should have thought it superfluous, had it been easier to me than it was, to have interrupted my text, or crowded my margin, with references to every author whose sentiments I have made use of. There is, however, one work to which I owe so much, that it would be ungrateful not to confess the obligation: I mean the writings of the late Abraham Tucker, Esq. part of which were published by himself, and the remainder since his death, under the title of 'The Light of Nature pursued, by Edward Search, Esq.' I have found in this writer more original thinking and observation on the several subjects that he has taken in hand, than in any other, not to say, than in all others put together. His talent also for illustration is unrivalled. But his thoughts are diffused through a long, various, and irregular work. I shall account it no mean praise, if I have been sometimes able to dispose into method, to collect into heads and articles, or to exhibit in more compact and tangible masses, what, in that otherwise excellent performance, is spread over too much surface.

The next circumstance for which some apology may be expected, is the joining of moral and political philosophy together, or the addition of a book of politics to a system of ethics. Against this objection, if it be made one, I might defend myself by the example of many approved

writers, who have treated *de officiis hominis et civis*, or, as some choose to express it, 'of the rights and obligations of man, in his individual and social capacity,' in the same book. I might allege, also, that the part a member of the commonwealth shall take in political contentions, the vote he shall give, the counsels he shall approve, the support he shall afford, or the opposition he shall make, to any system of public measures,—is as much a question of personal duty, as much concerns the conscience of the individual who deliberates, as the determination of any doubt which relates to the conduct of private life; that consequently political philosophy is, properly speaking, a continuation of moral philosophy, or rather indeed a part of it, supposing moral philosophy to have for its aim the information of the human conscience in every deliberation that is likely to come before it. I might avail myself of these excuses if I wanted them; but the vindication on which I rely is the following:—In stating the principle of morals, the reader will observe that I have employed some industry in explaining the theory, and showing the necessity of general rules; without the full and constant consideration of which I am persuaded that no system of moral philosophy can be satisfactory or consistent. This foundation being laid, or rather this habit being formed, the discussion of political subjects, to which, more than to almost any other, general rules are applicable, became clear and easy. Whereas, had these topics been assigned to a distinct work, it would have been necessary to have repeated the same rudiments, to have established over again the same principles, as those which we had already exemplified, and rendered familiar to the reader, in the former parts of this. In a word, if there appear to any one too great a diversity, or too wide a distance, between the subjects treated of in the course of the present volume, let him be reminded, that the doctrine of general rules pervades and connects the whole.

It may not be improper, however, to admonish the reader, that, under the name of politics, he is not to look for those occasional controversies, which the occurrences of the present day, or any temporary situation of public affairs, may excite; and most of which, if not beneath the dignity, it is beside the purpose, of a philosophical institution to advert to. He will perceive that the several

disquisitions are framed with a reference to the condition of this country, and of this government: but it seemed to me to belong to the design of a work like the following, not so much to discuss each altercated point with the particularity of a political pamphlet on the subject, as to deliver those universal principles, and to exhibit that mode and train of reasoning in politics, by the due application of which every man might be enabled to attain to just conclusions of his own. I am not ignorant of an objection that has been advanced against all abstract speculations concerning the origin, principle, or limitation, of civil authority; namely, that such speculations possess little or no influence on the conduct either of the state or of the subject, of the governors or the governed; nor are attended with any useful consequences to either; that in times of tranquillity they are not wanted, in times of confusion they are never heard. This representation, however, in my opinion, is not just. Times of tumult, it is true, are not the times to learn; but the choice which men make of their side and party, in the most critical occasions of the commonwealth, may nevertheless depend on the lessons they have received, the books they have read, and the opinions they have imbibed, in seasons of leisure and quietness. Some judicious persons, who were present at Geneva during the troubles which lately convulsed that city, thought they perceived, in the contentions there carrying on, the operation of that political theory, which the writings of Rousseau, and the unbounded esteem in which these writings are holden by his countrymen, had diffused amongst the people. Throughout the political disputes that have within these few years taken place in Great Britain, in her sister-kingdom, and in her foreign dependencies, it was impossible not to observe, in the language of party, in the resolutions of public meetings, in debate, in conversation, in the general strain of those fugitive and diurnal addresses to the public which such occasions call forth, the prevalency of those ideas of civil authority which are displayed in the works of Mr. Locke. The credit of that great name, the courage and liberality of his principles, the skill and clearness with which his arguments are proposed, no less than the weight of the arguments themselves, have given a reputation and currency to his opinions, of which I am persuaded, in any

unsettled state of public affairs, the influence would be felt. As this is not a place for examining the truth or tendency of these doctrines, I would not be understood by what I have said to express any judgment concerning either. I mean only to remark, that such doctrines are not without effect; and that it is of practical importance to have the principles from which the obligation of social union, and the extent of civil obedience, are derived, rightly explained, and well understood. Indeed, as far as I have observed, in political, beyond all other subjects, where men are without some fundamental and scientific principles to resort to, they are liable to have their understandings played on by cant phrases and unmeaning terms, of which every party in every country possesses a vocabulary. We appear astonished when we see the multitude led away by sounds; but we should remember that, if sounds work miracles, it is always on ignorance. The influence of names is in exact proportion to the want of knowlege.

These are the observations with which I have judged it expedient to prepare the attention of my reader. Concerning the personal motives which engaged me in the following attempt, it is not necessary that I say much; the nature of my academical situation, a great deal of leisure since my retirement from it, the recommendation of an honored and excellent friend, the authority of the venerable prelate to whom these labors are inscribed, the not perceiving in what way I could employ my time or talents better, and my disapprobation in literary men of that fastidious indolence which sits still because it disdains to do little, were the considerations that directed my thoughts to this design. Nor have I repented of the undertaking. Whatever be the fate or reception of this work, it owes its author nothing: in sickness and in health I have found in it that which can alone alleviate the one, or give enjoyment to the other,—occupation and engagement.

MORAL AND POLITICAL PHILOSOPHY.

BOOK I.

PRELIMINARY CONSIDERATIONS.

CHAP. I. DEFINITION AND USE OF THE SCIENCE.

MORAL PHILOSOPHY, or ETHICS, is the science which teaches men their duty, and the reasons for it. Its use is, to guard against the errors arising from defects in the rules of life, or from ignorance in their application.

The Rules are the Laws, 1. of Honor; 2. of the Land; 3. of God.

CHAP. II. LAW OF HONOR.

The Law of Honor is constructed by, and for the use of, people of fashion.

Hence it regulates the duties only of equals; and omitting such as relate to inferiors in life, passes no censure on acts hurtful to society, unless they interfere with the concerns carried on between such equals; and hence unfeeling conduct to domestics and dependents, and the non-payment of debts to tradesmen, are no offences in the code of Honor.

Again, the Law of Honor, being constructed by, and for the use of, persons in the pursuit of pleasure,

passes no censure on acts connected with such pursuit; and disregarding the law of God, ordains even, as in the case of duelling, a kind of murder.

CHAP. III. LAW OF THE LAND.

They, whom the Law of Honor does not affect, make the Law of the Land their rule of life; and are content to do or omit only what accords with, or is not opposed to, some law.

But such a rule is defective, because the law itself is doubly so, both in what it omits, and in what it permits.

I. It omits many duties, as not objects of compulsion. For as it never speaks but to command, and commands only where it can compel, voluntary duties must necessarily be omitted, as beyond the reach of the law.

II. It permits, or rather does not punish, many crimes, as incapable of positive description. For either it must define accurately the crime to be punished, or it must leave to the discretion of the magistrate to apply a vague description to the individual case, and thus to lead the way to the tyrannical abuse of it. In all cases, where the uncertain nature of the act defies a previously fixed description, the law in free states chooses rather to leave men at liberty, than to invest the magistrate with a power so full of danger.

CHAP. IV. LAW OF GOD.

Whoever expects to find in Holy Writ a specific solution of every doubtful point of moral conduct, looks for more than he will find. Had it been otherwise, the volume would have been too bulky to be read, much less circulated; and, in the language of St. John, the world itself would not have contained all the books necessary to be written. This will appear manifest from considering, that the laws of England alone, with its acts of parliament and deci-

sions of the courts, occupy nearly one hundred folio volumes; and yet in not one instance out of ten can you find the case exactly in point; to say nothing of other numerous doubtful cases, on which the law neither does nor professes to state any thing positive. So far, then, from imitating the particularity of human laws, by which the bulk, not value, of the volume would have been increased, the Scriptures teach morality by general rules, relating to piety, justice, benevolence and purity; such, for instance, as to worship God in spirit and in truth; to do as we would be done by; to love our neighbor as ourself; and that pollution arises not from what goes into the mouth, but what comes out of the heart.

These rules are illustrated by fictitious examples, as in the case of the good Samaritan; or by real events, as in Christ's praise of the widow's mite; or by answers to questions, put to Christ or his disciples, as in the case of the young man, who asked, 'What lack I yet?'

This plan of instruction is, in fact, the same in moral philosophy as in the practical sciences; where certain rules are laid down and examples subjoined, not with a view to embrace every possible case, but merely to explain the principle and to exhibit a specimen of its application. In the Scriptures, however, there is this difference; that neither the rules nor examples are given methodically, but as occasion suggested the one or the other, and thus both carry with them a feeling of vividness far superior to the coldness of a regular system.

Besides, as the Scriptures are addressed to persons not quite ignorant of the principles of natural justice, they do not so much teach new rules of morality, as enforce the practice of it by new and better motives; the very business of, and the one most wanted in, a revelation from God. Thus, for instance, extortioners are condemned by the Scriptures, while the act of ex-

tortion is supposed to be known and consequently not defined there.

Thus much has been said to prove, that, if the Scriptures be deficient, they are so from design, and that they do not supersede the use of a science by which such deficiency can be best supplied.

CHAP. V. THE MORAL SENSE.

The father of Caius Toranius, proscribed by the triumvirate, had concealed himself in a place known only to his son, by whom he was betrayed. The old man, more anxious for his son's safety and advancement, than his own danger, inquired of the officers who seized him, whether his son was well, and had done his duty as a soldier? 'That son,' said the officer, 'so dear to thee, has betrayed thee; and to him,' striking the old man with a poniard, 'thou owest thy death.' The unhappy parent fell, affected less by his fate than at the treachery of his child.

If this story were related to a savage, uninfluenced by the modes of thinking and acting in civilised life, would he feel that sentiment of disapprobation of young Toranius' conduct, which a civilised being feels?

They, who maintain the existence of a moral sense, or an instinctive love of virtue and hatred of vice, affirm that he would; they who deny the existence of such a sense, affirm he would not.

As the experiment has never been made, and is not likely, even if it were possible, to be made, the event can be decided from probable reasons alone.

They, who contend for the affirmative, say that we approve of virtue, and condemn vice, on the instant and without deliberation, unaffected by personal interest, and unable even to give a reason for such approbation; and that as this feeling is universal, it can arise only from an instinctive moral sense.

To this it has been replied, 1. That this feeling is not universal; that there is scarcely a single vice,

which is not countenanced in some age or country; that, for instance, in one place aged parents are supported, in another destroyed by their children, under the same plea of affection; that suicide was in Rome heroism, is in England felony; that theft punished here, was in Sparta praised; that the promiscuous intercourse of the sexes, reprobated by civilised nations, is practised without reserve by savages; and that the whole frame of society, which to some countries is their pride, is to others their aversion. Nor is this difference confined to different nations; even persons living in the same place view the same acts in a different light, and their opinions, depending on accidental circumstances, cause some to consider forgiveness of injuries as magnanimity, which others deem a meanness; and so of other acts, which are approved and condemned according to ever-varying fashion, unstamped with the steady hand and indelible characters of universal nature. 2. Granting that decisions are made without deliberation on points of conduct, yet such apparent rapidity of judgment is no proof of the existence of an instinctive moral sense; as this phenomenon may be easily accounted for, by remarking the facility with which the mind draws general conclusions from insulated facts, and how readily the sentiment, which was the result of reflection as applied to the first case of a moral question, acquires the force of an habitual sentiment, when applied to a subsequent similar case.

Of this continuance of a feeling, even when the reason for it has ceased, the example of the miser is remarkably in point; who, when in years, and without ties of blood or friendship, continues to add to his hoard, although sensible of the folly of a pursuit, which is still carried on with all the ardor of an incipient passion, or the dread of impending starvation.

By such means the custom of approving, or not, certain actions commences: and the custom, once estab-

lished, grows stronger and stronger by the various modes of social intercourse, until the lesson of the child, repeated by the man and scarce forgotten in dotage, produces that uniformity of sentiment, which is felt by all, though traced by few during its progress of association to the real principle of imitation.

Of the power of this principle the most conspicuous instance is afforded by children, in whom the propensity to imitate is, if anything deserves the name, an instinct. By this very power children learn first the words and then the ideas attached to the terms connected with the feelings of love and hatred, and of praise and censure, and thus exemplify, both in theory and practice, the generation of a moral sense.

Another objection to the system of moral instincts is, that its maxims do not bend to circumstances. Veracity, which seems to be, if any, a moral duty, is not in that system permitted to be violated, as it ought to be; for as the obligation of a promise depends on the circumstances under which it was made, it cannot be enforced, unless all the conditions have been fulfilled between the parties.

It has been further objected to the same system, that, if there existed an instinctive moral sense, a clear idea would have also existed of the object connected with such instinct; for the instinct and object are of necessity inseparable, both in imagination and reality; that is, if it were an instinct to approve an act, we should have, what we have not, a clear conception of such act.

As the preceding argument, however, if true, would deny the existence of instinct even in brutes, it will hardly carry conviction, although it cannot easily be answered.

There exists, then, no instinctive moral sense, or if it does, it is not to be distinguished from habit; and consequently it is unsafe to found on such uncertain data a system of ethics, or to determine on the right

or wrong of certain actions, by appealing to impulses, which may or may not exist, instead of looking, as we ought, to the general tendency of such actions.

Aristotle presumes that barbarians were intended to be slaves; and deduces from this maxim conclusions in favor of the slave-trade, which then prevailed; and the same maxim is doubtless self-evident to those who are now engaged in a similar traffic.

But in this example it is plain that the laws of custom have been mistaken for the order of nature; and as nothing is so easy as to make a maxim, when in unison with the prejudices of the maker, it is to be feared that a system of morality, founded on instincts and impulses, would only find out excuses for established practices rather than reasons for correcting them.

But granting the existence, what is the power of such instincts? The power, it is said, of conscience, whose remorse the ill-doer feels. But if he feels it not, or holds it light, when balanced against the pleasure or profit of a wicked act, (on which point the sinner, who feels both the pleasure of the sin and the pain of remorse, is the best judge) the advocate for a moral instinct has no motive sufficiently high to offer. For should he say that such instincts are indications of God's will, and a presage of a future state, we reply, he resorts to a rule and motive ulterior to instincts, and which the believer in Holy Writ arrives at by a surer road, at least so long as the question remains unsettled respecting the existence or not of instinctive maxims: a question which, in our system, is one of mere curiosity, and to be left to those more inquisitive than ourselves, about the natural history of Man.

CHAP. VI. HUMAN HAPPINESS.

'Happy' is a relative term, as regards an individual compared either with others or himself; in the one

case the comparison is with the lot of man generally, in the other with the individual's own previous or subsequent condition. Strictly speaking, that condition may be called happy, where the aggregate of pleasure exceeds the amount of pain; and the quantity of such excess is the measure of the degree of happiness, of which the greatest quantity attainable by man is what we mean, when speaking of human happiness.* In this inquiry it is needless to enlarge on the dignity of man; the superiority of the intellect over the body; of the delicacy and refinement of some pleasures, or of the grossness and sensuality of others; because pleasures in fact differ only in degree and not in kind; and it is from a view of their intensity, if seldom, or their continuance, if often enjoyed, that every question respecting human happiness must receive its decision. It will be our business rather to define, I. What Human Happiness is, and, II. What it is not.

I. Happiness does not consist in the pleasures of sense, or animal gratifications merely. For, 1st, such

* If any positive signification can be affixed to the term 'happiness,' I should take it to denote a certain state of the nervous system in that part of the body in which we feel different passions. Whether this part be the heart, or the diaphragm, or the upper orifice of the stomach, or rather a kind of fine net-work, lining the whole region of the præcordia, it is impossible to say. But as each painful sensation may disturb the fibres at one time, so a series of such sensations may at length derange the system, and produce such a perpetual irritation, as will show itself by fretfulness, impatience, and restlessness. On the other hand, a succession of pleasurable sensations may have such an effect on this subtle organisation, as to cause the fibres to relax, and to recover, or, if not lost, to preserve, that harmonious conformation, which gives to the mind its sense of satisfaction. This state may be denominated happiness, and is so far distinguishable from pleasure, that it does not consist, like pleasure, in the gratification of one or more of the senses, but is rather the effect which such gratifications produce on the nervous system. These conjectures belong not, however, to our province. The comparative sense, in which we have explained the term Happiness, is more popular, and is sufficient for the purpose of the present chapter.

pleasures are short-lived, especially the grosser kind, independent of the aid of preparation and expectation: 2dly, they lose their charm by repetition; since, as the nerves, by which we receive pleasurable sensations, lose their sensibility, the mind becomes indifferent to a gratification no longer new: 3dly, the eagerness for intense delights destroys the relish for others less intense; and as such high gratifications occur seldom, time must hang heavy on our hands.

From no delusion do men suffer so much as from the expectation of intense pleasure. The very expectation spoils the anticipated delight. Even when the enjoyment does come, efforts are made to persuade ourselves of the reality of the pleasure, instead of the pleasure producing the effect without effort; and the delight we aimed at is generally followed by the secret grief of having missed our aim. Besides, the habit of seeking powerful stimulants prevents the relish for less intense delights, whose variety and succession alone supply the stream of continued happiness.

They, whose whole business is the pursuit of pleasure, unrestrained by conscience or want of means, are still devoured by *ennui*. With a restless passion for variety, they become fastidious in the choice of pleasure; and though languid in the enjoyment, are miserable under the want of it. Pleasures, of which the limits are soon reached, and from which they as soon decline, are necessarily short-lived; because the organs of perception cannot long remain on the stretch; and in the endeavor to compensate for the brevity of the pleasure by its frequency, more is lost than gained, through the fatigue of the faculties and diminution of sensibility; which, as age advances, is felt the most by the voluptuary, who, teased by desires that can never be gratified, is tortured still more by the memory of pleasures fled never to return.

Nor are the pleasures of sense alone of an unsatisfactory nature. Those, which are purchased by pecu-

niary embarrassments, are bought too dear, as the subsequent difficulty cannot compensate for the previous gratification.

2. Happiness does not consist in the absence of pain, bodily and mental, unaccompanied with some kind of exertion. For such a listless state does, like the opposite restless state of the voluptuary, bring with it the same feeling of *ennui;* and oppresses first the mind with imaginary evils, and afterwards the body with real ones. Hence the disappointment felt by persons, who seek for happiness by a retirement from the bustle and glare of active life to the snug country-box or the cloister's gloom. Where the cause of uneasiness is known, by removing the cause the uneasiness is cured; but where the distress is imaginary, (and, for the want of real, imaginary distress is frequently substituted and felt as keenly as the real) from the ignorance of the cause, the cure becomes impracticable, unless the attention of the party so suffering be turned from the imaginary to a real pain; just as a fit of the gout will sometimes cure the spleen. In like manner, the active excitement of hope and fear leads men of liberal minds to gaming, and other spirit-stirring pursuits, to prevent the fatigue they would otherwise feel from the dead calm of passionless inaction.

3. Happiness does not consist in an elevated station of life. For if all superiority afforded pleasure, the greater the number over whom such superiority is found to be, the greater would be the quantity of happiness enjoyed. But superiority is a term of confined import, and relates only to a comparison amongst persons who deem themselves generally equal. The shepherd is not pleased with his superiority as compared with his dog, nor the prince as compared with a peasant. Where no competition exists, the superiority is lost; a fact little noticed by most men. But if the rustic can excel fellow-rustics, or the prince fellow-princes, in points

where they respectively contend for mastery, then, and only then, does the idea of superiority bring with it actual satisfaction. Hence the pleasure of ambition is not confined, as generally thought, to men of high rank in life, but is in reality common to all conditions. The farrier, who is in the greatest request for his veterinary skill, possesses the delight of distinction as truly and substantially as the prime-minister does, whose skill is required to settle the affairs of the nation. In either case, it is not the object of competition, but the consciousness of overcoming a rival, that constitutes the pleasure of superiority.

Philosophers smile at the contempt shown by the rich to the petty rivalries of the poor; which after all are quite as reasonable as the squabbles of the rich themselves, to whom, as well as to the poor, the pleasure of success is the same.

The happiness, then, of the great, as far as it depends on the pleasures of ambition, is not greater than the happiness of the not-great. But whether the pursuits of ambition in any case be a source of happiness, is a question both irrelevant and doubtful. The pleasure of success is exquisite, so is the anxiety of pursuit, nor less the pain of disappointment. But the pleasure is short-lived. Rivals left behind are less regarded than those in view before; a succession of new struggles is kept up as long as an opponent remains; and when there is none, the pleasure and the pursuit are both at an end.

Happiness, then, does not consist in the pleasures of sense, in the absence of pain, or in the pursuits of ambition.

II. We are now to consider in what happiness does consist. In life, the great art is to know beforehand, what will please for a time and continue to please. But this fore-knowlege is difficult of attainment. Some pleasures, alluring at a distance, become when

possessed insipid, or short-lived ; while others start up unthought of. The necessity of this fore-knowlege is the greater as the power to change is the less, after the experiment has been tried ; and were it more practicable, it would be unadvisable, as such shifting is unfavorable to the happiness of any condition.

Through the great variety of taste in man, arising from every different shade of original structure and accidental situation, it is impossible to devise a plan of universal happiness. All that can be attempted, is, to describe a mode of life, in which the majority will seem the happiest; for though the apparent is not the true measure of the real happiness, it is the best we can arrive at.

With this maxim as the guide, Happiness will be found to consist—

1. In the exercise of the social affections. Good spirits are a proof of apparent, if not of real happiness. Now as they who lead a social life surrounded by objects of affection possess better spirits than they who pass a solitary life, it is fair to infer they are more happy. In like manner, the exercise of social sympathies increases the sum of happiness by connecting the individual with the species, through the refreshing medium of acts kindly done and gratefully acknowleged.

2. In the employment of our faculties in some interesting distant object. No fulness of present pleasure can insure a continuance of happiness, unless the mind has something to look forward to. Hence the alacrity of spirits in men, engaged in objects of engrossing interest, compared with the dejection of those, whose faculties have not been exerted at all, or have become exhausted from a too violent use of them. To avoid this insupportable vacuity of mind, recourse is had to practices destructive of health, fortune, or character ; and objects are sought with trouble, which could without trouble be obtained. But though hope

is of so much importance as an ingredient in happiness, by giving rise to continued exertions; care must be taken that it does not fret the mind into impatience or destroy it by despair. To provide, then, ourselves with a succession of pleasurable engagements, there is need of judgment to choose the end adapted to our opportunities, and of imagination to transfer to the means the idea of pleasure.

Hence the pleasures most valuable are those productive not of most intensity of fruition, but of activity in their pursuit.

Herein has a man earnest in his endeavors after a future state the advantage over all the world. His pursuit is one of constant activity, and, unlike other pursuits, ends only with his life. Yet even such a man must have many ends besides the far one. But all such other ends are only subordinate to and co-operate with the main object of his fondest and firmest hopes.

Occupation is every thing; the more connected it is with our social state the better, with reference either to the species or individuals, and as exhibited in strenuous endeavors to better in every way others or one's-self. But if faculties or opportunities be wanting to exert ourselves on a large scale or extensive sphere, any engagement, however trifling, provided it be innocent, is better than none. For so long only as the mind is employed, it is happy. Misery is the inevitable result of a mind not fixed for the time being to one pursuit.

3. In the prudent formation of habits. The grand secret in the art of human happiness is to set the habits so that every change may be for the better. But as whatever is habitual is easy, and a change of habit proportionally painful, those habits are the best, from which a deviation is an indulgence. To the habitually luxurious, dainties are of less worth than is to the peasant his habitual homely fare; from which when the latter deviates, he finds a feast; while the

former must be well entertained to escape disgust. They who sit at cards, and they who follow a plough, so long as both are intent on their respective employments, are equally happy; but to the card-player, interruption is a pain; to the ploughman, a pleasure; and hence the Sabbath is a day of rest to one, of restlessness to the other. He who has learned to live alone, enters into company with hilarity, and leaves it without regret; while he who lives but in a crowd, enjoys there only what the other does alone, habitual gratification. Remove by a want of health or means the one from his usual haunts, and he will find in solitude the horrors of melancholy, where the other can find all the charm of repose. The one, restless through the day, is happy only when asleep; to the other the day, furnished with employment for every hour, is never too long; or if unemployed in body, he enjoys a kind of dreamy existence, with a mind at ease and hankering after nothing. In like manner, he who has been accustomed to read works of science and depth of thought, finds in lighter literature a relaxation and relish, unknown to him, who, excited by novelty alone, is rather seeking amusement than actually amused; and who, quickly exhausting the scanty stock of publications to his taste, is left without objects of interest in an extensive field of varying enjoyment.

Again, as far as money brings happiness, it is not the income, but its increase, which gives the pleasure. Two persons, one of whom begins with a large and ends with a small income, while the other begins with a small and ends with a large one, may eventually spend the same sum; but their satisfaction will be different, depending on the fact whether they respectively begun at the end of the ascending or descending scale.

4. In the enjoyment of health. By health is here meant not only freedom from bodily ailments, but the

possession of good spirits; which, dependent on the state of the body generally, are not usually included in the definition of that word. In this comprehensive sense, health is the one thing needful; and he, who pursues his happiness rationally, will consider no sacrifice of rank and fortune, business or amusement, too great for its attainment. It is a pleasure independent of all others, and of which we can say only that it is the gift of a benevolent Deity, and seems to constitute the sole happiness of many animals, which, like oysters, possess no visible means of enjoyment.

From this view of happiness we may infer, what moralists have not proved;—1. That happiness is pretty equally distributed in civil society; 2. That vice has no advantage over virtue, even in this world.

CHAP. VII. VIRTUE.

Virtue is the doing good to mankind, in obedience to the will of God, and for the sake of everlasting happiness.

In this definition, the 'good of mankind' is the subject; the 'will of God,' the rule; and 'everlasting happiness,' the motive to virtue.

Virtue has been divided into—Benevolence, to propose good ends; Prudence, to suggest the best means for their attainment; Fortitude, to bear up against the opposing passions from without; and Temperance, to bear down the opposing feelings from within. For instance, Benevolence leads us to assist an orphan; Prudence teaches us how to assist him best; Fortitude enables us to bear the evils resulting from such act of assistance; and Temperance keeps down all considerations of self, likely to interfere with the end proposed.

Virtue has been also divided into Prudence and Benevolence; the former, attentive to our own interest, the latter to that of our fellow-creatures; and both directed to the increase of universal happiness.

The four Cardinal Virtues are, Prudence, Fortitude, Temperance, and Justice.

But the division of Virtue in modern times, is into duties: 1. piety, &c. towards God: 2. justice, &c. towards our fellow-creatures: and, 3. temperance, &c. towards ourselves.

ON THE GENERAL REGULATION OF CONDUCT.

1. Man acts more from habit than reflection. On few points of moral conduct do men think at all; on fewer still do they wait for the result of reflection. The opinion is generally determined by a sudden impulse, the result of previous habits. This conduct, apparently wrong, is really right, and the best suited to the weakness of human nature. In the rapid events of life there is little leisure for reflection; and were there more, he who reasons when he ought to act, is sure, in case of temptation, to reason wrong.

But if man be thus passive under his habits, where is the exercise of virtue and the guilt of vice? In the formation of such habits.

Hence arises the necessity of doing or omitting many things for the sake of habit alone. For instance, a person in apparently great distress begs for charity. If we asked ourselves, whether the object be really deserving; whether charity so bestowed be not to encourage idleness; whether the money could not be better applied; we should perhaps doubt of giving relief at all. But when we reflect that the distress exists—that the feeling of charity ought to be cultivated—that if it be not cultivated, selfishness will spring up—a wise man will do for his own sake, what he would not do for the beggar's, and act generously rather than do violence to a habit so generally useful. Again, a man is in the habit of strict veracity. But an occasion occurs, where a deviation from truth seems excusable to gratify others and himself. The lie he has to tell is harmless, but amusing. Why then

should he not indulge in it? The answer is, it will destroy his previous habit of strict veracity; that similar occasions may return, where the temptation is less, the mischief more; and as his scruples wear away, the habit of lying will be induced, whenever it suits his purpose.

Hence, too, may be explained the nature of habitual virtue; through the operation of which a man may perform various acts of virtue, although uninfluenced by, or ignorant of, the subject, rule, or motive of virtue. How so? it will be asked. Precisely, it will be replied, as a man may be a very good servant, without being conscious of studying at every turn his master's interest; but then he must for a length of time have been under the actual influence of such motives; in which previous habit his present virtue consists.

Man is, in truth, a bundle of habits. Every virtue and vice, every modification of word, thought, and deed, can and does become a habit; nor is there a quality or function of the body or mind, that is not influenced by this great law of human nature.

II. Christianity has not defined the precise quantity of virtue necessary for salvation.

As all revelation must be transmitted through the ordinary vehicle of language, the objection above-stated will not require an answer, until it be shown that any form of words could express this quantity, or that a standard of moral conduct could exist, adapted to the capacities and circumstances of different men. It is enough for us to know from Scripture[1] that the rewards and punishments will be so fitted to every degree of virtue and vice, that none may labor in vain. But to this arrangement it has been objected, that God acts unjustly in admitting one part

[1] Mark ix. 41. Luke xii. 47. xix. 16. 2 Cor. ix. 6.

into heaven, and condemning the other to hell, because there can be little to choose between the worst man received, and the best man rejected. But may there not be as little to choose in their conditions?

This is not the place to anticipate the detail of Scripture morality. But the following positions may be here advanced with safety:

1. That a state of future happiness cannot be expected, except for conduct habitually or designedly correct. For were it otherwise, the sanctions of morality and religion would possess neither use nor authority.

2. That a state of happiness cannot be expected by those who continue to commit one sin, or to omit one duty.

Because, 1. every command of God is equally binding; 2. by such allowance every sin would in turn be committed with impunity; and, 3. such laxity of morals is directly denounced by Scripture, where duties are recited[1] collectively, and vices[2] disjunctively, thus proving that single virtues cannot gain, though single vices may lose, God's approbation; nor can such expressions as 'Charity shall cover a multitude of sins,'[3] and, 'he who converteth a sinner, shall hide a multitude of sins,'[4] be reasonably extended to sins committed habitually.

3. That a state of mere unprofitableness will not go unpunished.

As this doctrine has been laid down expressly by Christ in the parable of the talents,[5] all further reasoning is unnecessary; and it is only requisite to direct attention to the language adopted on the occasion, where the servant is censured for being 'slothful,' and ordered to be 'cast out into outer darkness' as an 'unprofitable servant.'

[1] 2 Pet. i. 5. [2] 1 Cor. vi. 9. [3] 1 Pet. iv. 8.
[4] James v. 20. [5] Matt. xxv. 14.

III. In every question of doubtful conduct, we are bound to take the safe side.

Suppose, for instance, that it were doubtful whether suicide be lawful or not; still a man ought not to commit it, because he can have no doubt that it is lawful to let it alone. This, it is replied, is only the prudent side of the question, and does not touch the legality of the act. We assert, on the contrary, that the act is not lawful, so long as we have any doubts of its legality. This is the decision of St. Paul[1] on a similar case; and with that we may rest contented: —'I know that there is nothing unclean of itself; but to him that esteemeth it unclean, to him it is unclean. Happy is he that condemneth not himself in that thing which he alloweth.'

[1] Rom. xiv. 14.

BOOK II.

MORAL OBLIGATIONS.

CHAP. I. WHY IS A MAN OBLIGED TO KEEP HIS WORD?

The reasons assigned for this obligation, although various, ultimately coincide, whether founded on 'right,' or 'the fitness of things,' or 'a conformity with reason and truth,' or 'the promotion of public good,' or, lastly, on 'obedience to God's will.'

For by 'the fitness of things' is meant their fitness to produce happiness; by 'the reason of things' is meant the principle by which a judgment is formed of the power of things to produce happiness, of which judgment truth is the result. Hence, what promotes general happiness is agreeable to the fitness of things, to reason, and truth: and, again, as 'the will of God' requires only what promotes general happiness, whatever leads to such an end must needs be 'right,' by which is merely meant a conformity with the rule, whatever it may be, of moral conduct.

But it may be asked, why is a man obliged to do what is right, or suited to the fitness of things, or to nature, reason, and truth, or to promote public good, or to obey the will of God?

To answer this question it is necessary to inquire, 1. What is meant by saying that a man is obliged to perform any act; and, 2. Why he is obliged to perform the specific act of keeping his word.

CHAP. II. THE MEANING OF THE WORD 'OBLIGATION.'

A man is said to be obliged, when he is urged by a violent motive at the command of another.

The motive must be violent; for, if not, his acquiescence will be voluntary, and not compulsive; and, consequently, there will exist no obligation to perform the act in question.

The act must be done at the command of another; for, as no man can violently command himself to perform any act, compulsion must come from another. But as no command can be effective, unless accompanied with the hope of reward or fear of punishment, the result of obedience or disobedience, the obligation to do what is right is referred at once to the violent motives of expected pleasure and pain, resulting from obedience and disobedience to the will of God; and thus the obligation to keep one's word is the same as the obligation to perform any other act of duty, where the hope of happiness or dread of pain hereafter is the motive, and the will of God the rule.

CHAP. III. ON THE DIFFERENCE BETWEEN ACTS OF OBLIGATION AND OF PRUDENCE.

From the preceding view of the question, it appears, that when a man is said to be 'induced' or 'obliged' to perform any act, the motives are the same in kind, but differ only in degree. In like manner, an act of prudence differs from an act of obligation only in a degree still further removed; for the former looks to the slight motives of present, the latter to the weighty motives of future, pleasure and pain.

This recurrence to the hopes and fears of a future state as the grounds of moral obligation, has been and may be still objected to, but to no purpose; unless the objectors can show that virtue leads always to happiness here, or at least to a greater share than its opposite vice ever attains.

Since, then, we cannot dispense with the doctrine of a future state of rewards and punishments, as the ground of moral obligations, we have to inquire,

1. If there be, in reality, such a state; and,

2. What actions will be so rewarded and punished.

Of these questions, the first relates to the evidences for the truth of the Christian religion; the second to the detail of the code of Christian morality. Both questions are too much for one work; and the first is, therefore, taken for granted in the present treatise.

CHAP. IV. THE WILL OF GOD.

As the will of God is our rule, the whole business of Christian morality turns upon our knowlege of such will; and that once known, our duty is known also.

Now the will of God is known by, 1. The express words of Holy Writ; and, 2. By such inferences as are drawn by the light of nature from the works of God.

Thus religion, natural and revealed, go hand in hand; and as the object of both is the same, to separate them is an absurdity; since it matters not how we discover the will of God, if we only do discover it. Of the modern scheme of thus uniting ethics with Christianity Hume and others have complained. But have the complainants been able to make any thing of morality without such union? The ninth section of Hume's Treatise on the Principles of Morals contains the practical application of his system. Let any one read it, and say whether the motives there proposed are sufficiently 'violent' to correct the bad passions of our nature; if not, the reader will see with us the necessity of stronger motives. But this is not the present question. For if Christianity be true, there is a state of future rewards and punishments, and such motives cannot be neglected, and least of all by a Christian moralist, who leaves to others who reject the Scriptures, to build up, if they can, morality without their aid.

To revert, then, to the method of discovering the will of God by the light of nature, it is only necessary to inquire into the tendency of any act to promote or diminish general happiness. For as this rule rests on the presumption that the Creator wishes the happiness of his creatures, such actions as promote such wishes must be agreeable to him, and the contrary.

On this presumption our whole system rests. The reasons, therefore, on which it rests, must be explained.

CHAP. V. THE DIVINE BENEVOLENCE.

When God created mankind, he either wished their happiness or misery, or he was indifferent to either or both. Had he wished the misery of man, he might have made all the present sources of pleasure sources of pain. Had he been indifferent to the happiness or misery of man, the capabilities for pleasure and pain must have been the result of accident; for all design is, by the supposition, excluded. But as accident could not have fitted all objects to the senses, so that the one should impart and the other receive uniformly corresponding impressions, the supposition of accident must be excluded; and, consequently, God must, when he created man, have wished his happiness, and made provision accordingly.

Again, contrivance proves design; and the tendency of the contrivance indicates the intention of the designer. The world abounds with contrivances directed to purposes of good. But though evil exists, it is not the design of the contrivance. Teeth are contrived for the purpose of eating; yet they ache; but their aching is incidental to the contrivance, not the design of it, and a proof, if you will, of defective contrivance. So in the case of human instruments, a sickle is contrived to reap corn; and though from its form it occasionally cuts the reaper's fingers, such is not the design of, but the accident from, its use. On the other hand, instruments of torture are contrived with the de-

sign to give pain. Nothing similar to this is found in the works of God. No anatomist ever discovered any organ, for instance, in the body, whose design could be shown to be only the infliction of pain; nor does he, if he meets with a part whose use he knows not, suspect even that its design is to annoy. Since, then, the contrivances indicate that God designed man's happiness, and as there are no proofs of any change in such design, we must in reason believe in its continuance.

Although a view of universal nature is apt to bewilder the mind, there is, however, always a bright spot in the prospect, on which the eye rests with complacency: and thus a single example will produce conviction which many united would fail to effect. To me the benevolence of the Deity is more clearly seen in the pleasures of children than in any thing else. The pleasures of grown persons are the result of their own seeking, by the cultivation of talents aided by accidental circumstances; but those of a healthy infant are so evidently furnished by the hand of another, that the sight of a child at play affords to me sensible evidence of the intentional benevolence of the Deity.

Having thus proved that the Creator wished and wishes the happiness of his creatures, we proceed to investigate the rule built upon such fact, that 'the method of knowing God's will, as shown by the light of nature, is to inquire into the tendency of any act to promote or diminish general happiness.'

CHAP. VI. UTILITY.

Actions, then, are to be estimated by their tendency;[1] expediency is right; and the utility of a moral rule constitutes its obligation.

[1] Actions in the abstract are right or wrong, according to their tendency; the agent is virtuous or vicious, according to his design. Thus, if the question be, Whether to relieve common beggars be right or wrong, we inquire into the tendency of such a conduct to public advantage or inconvenience. If the question be, Whether

But to these maxims it may be objected, that many acts useful in themselves are decidedly not right. For instance, it might be useful to rob a miser and to give his money to the poor, whose quantity of pleasure by such acquisition would be greater than the pain of the miser from his loss; it might be useful to obtain political power through perjury, with the view to advance the good of the state; it might be useful to murder even a bad landlord abusing the influence of his property, and to substitute a better one. Must we, then, justify plunder, perjury, and assassination, on the ground of utility? or must we give up our principle that utility is right? Neither is necessary. The true answer is, that such acts, in appearance useful, are really not useful; and on that account alone are wrong.

The consequences of actions are twofold, particular and general: the former refers to the mischief produced by an action, taken singly; the latter to the mischief produced by the violation of a rule generally useful.

Thus, for instance, the particular mischief produced by the murder, would be the loss of life, as dear to a bad as to a good man; while the general mischief produced is the violation of the law against murder.

Hence, though in such murder the particular good might outweigh the particular evil, yet would it be not useful, because it would produce a general mischief; and so of the cases of robbery and perjury above stated.

But as this decision presupposes the necessity of general rules in morals, such necessity must be demonstrated.

CHAP. VII. THE NECESSITY OF GENERAL RULES.

Acts of the same kind cannot be partly permitted

a man, remarkable for this sort of bounty, is virtuous for that reason, we inquire into his design, whether his liberality sprang from charity or from ostentation. Our concern is with actions in the abstract.

and partly forbidden: they must be all embraced under one general law; and the evidence, which proves them to be generally pernicious, is the ground of the law which forbids them all.

Thus in the case of the murder, should the assassin say he killed the rich rogue, because he thought his life pernicious, such a plea, if admitted in this case, must be admitted in all similar cases; and the consequence would be mischief generally by putting the life of any man in the power of his neighbor.

The necessity, then, of general rules in human government is apparent. But must the Deity also regulate future rewards and punishments by general rules? Yes. Because, as every government, whether human or divine, intends to influence the conduct of reasonable beings, if two similar acts be not similarly treated, the consequence of such neglect of general rules would be, that man would no longer know what to expect, or how to act. Rewards and punishments distributed at random, might, like a blank or a prize in a lottery, bring pain or pleasure for the moment, but, from the uncertainty of the event, could produce no influence on the conduct.

Hence, if there is to be a distribution of future rewards and punishments, such distribution must proceed on general rules.

But it will be said, that as on this system of general consequences, the guilt of a bad action consists in the example, if the act be done in secrecy, since it furnishes no bad example, part of the guilt drops off. In the case of suicide, for instance, if the act be done so that none can know or suspect it, the example can do no mischief; nor can a punishment hereafter be necessary to save merely a general rule from an exception.

But such reasoning, if adopted, would introduce a rule the least to be endured, that secrecy can justify an act. Besides, there would be reason to fear that people would be disappearing perpetually.

But before this plea of secrecy can be admitted, we ought to be satisfied respecting the queries following—

1. Whether the Scriptures do not teach us that the most secret actions will be brought to light.[1]

2. Whether such acts will not be the objects of future rewards and punishments.

3. Whether they will not, when brought to light, be treated, like other acts, by general rules.

CHAP. VIII. ON GENERAL CONSEQUENCES.

It has been said that the general consequences of an act may be known by considering the consequences, if it were generally committed. But to this it has been objected, that the guilt of one act cannot justly be charged with the accumulated guilt of many similar acts. We reply, that the reason for prohibiting the act, or the measure of its guilt, is in proportion to the mischief which would arise generally by not punishing the single act. Whatever is expedient is right. But then its expediency must be seen in all its ramifications, direct and remote. By this habit of viewing the consequences of single acts, the intensity of crimes apparently insignificant is best seen, and the severity of laws, apparently inhuman, fully justified.

For instance, in coining or forgery, the particular mischief is the trifling loss of the sum to the person who received the counterfeit money or forged paper; the general mischief would be to abolish the use of money or of paper in commerce.

In sheep or horse-stealing and burglary, the particular mischief is the loss of the sheep, or horse, or chattels to its owner; the general mischief would be the insecurity of property necessarily exposed.

In smuggling, the particular mischief is the trifling loss to the revenue from the duty unpaid; the general

[1] Rom. xi. 16. 1 Cor. iv. 5.

mischief would be the ruin of more honest traders in the same article who had paid the duty.

In breaking his parole, the particular evil is the escape of a captive; the general consequence of the act is the refusal of similar indulgence to other captives.

Hence, in many cases, the punishment for two commissions of a similar crime is the same, although the individual injury done be not the same; for the general consequences may be the same from two acts differing only in degree.

From the want of this distinction between a particular and general consequence, the ancient moralists have been compelled to introduce a new rule of conduct, designated τὸ πρέπον, or *honestum;* by which they meant a measure of right distinct from utility. While this last principle, *utile*, corresponded to their notions of rectitude, they went by it; but when that failed, they resorted to the other, *honestum;* and the only account they could give of the matter was, that acts similar to those detailed in chap. vi. might be useful; but as they were not also *honesta*, they were not to be deemed right.

There is a maxim in every body's mouth, and in most men's without meaning, 'not to do evil, that good may come.' The caution not to do a particular good at the violation of a general rule is salutary; for the good would seldom balance the evil. But strictly speaking, if good comes, evil cannot, unless with reference to the preceding views of particular and general consequences; to which it may be added, that if an act produce little effect as regards the many, so will the punishment of such act be little as regards the quantity of general misery.

CHAP. IX. OF RIGHT.

Right and obligation are reciprocal; thus if one man has a 'right' to an estate, others are 'obliged' to yield it up; or if parents have a 'right' to re-

spect from their children, the children are 'obliged' to pay it.

Now as moral obligation depends on the will of God, 'right,' the reciprocal to it, must depend on it also, and means, therefore, 'consistency with the will of God.'

But if 'right' be only the will of God, how can we conceive his acts, a manifestation merely of such will, to be 'wrong?' The answer is, that from the two principles, that God wills the happiness of his creatures, and that his will is the measure of right, we obtain the rules of right and wrong, which we habitually apply to certain acts, even to those of the Deity himself, though at the time of the application we do not perceive that such rules are deduced from the Divine will.

Right is a quality of persons or acts; of persons, as of a man who has a right to an estate, or of one who has not the right over his own life; of acts, as of a state which has a right to punish murder by death, or of one which has not the right to punish a debtor by imprisonment. In the latter case the definition given above can, in the former cannot, be substituted directly for the term 'right;' as it is 'right,' or 'consistent with the will of God,' to punish murder with death; but in the expression, 'a man has a right to an estate,' we can only mean, 'it is not inconsistent with the will of God' for such a man to have the estate in question.

CHAP. X. THE DIVISION OF RIGHTS.

The rights of persons are, I. natural or adventitious; II. alienable or inalienable; III. perfect or imperfect.

I. Natural rights are such as belong to man not in a state of society; adventitious are such as belong to man in a state of society.

Natural rights are a man's right to life and liberty, to the use of his limbs and the produce of his labor, and to the enjoyment of air, light, and water; for if any number of men were cast together on a desert land, they would all be entitled to these rights.

Adventitious rights belong to a state of society which possesses the right to make any and all laws for the regulation of such society; none of which would exist in a newly inhabited island.

But how can adventitious rights be created by man, if right itself depend only on the will of God? This question may be answered by appealing to the principle, that God wills the happiness of mankind. Consequently, acts, which lead to happiness in a social state, are right, which, not producing the same effect in a state not social, would be wrong.

Hence, adventitious rights, made by men, are not less sacred than natural rights, ordained by God; for both rest on the same foundation, the will of the Creator. Hence, it would be no less sinful than it is illegal, to dispossess by violence a man of an estate for which he can show as a title the right of law, although he cannot, as the twelve tribes could do, assert his claim to it, as a gift from God.

II. Rights are alienable or inalienable; i. e. can or cannot be transferred from one person to another.

The right possessed over things is alienable; over persons, inalienable. A man may transfer his cattle, for instance, to another, but not his wife. Thus, too, he may transfer his right to his own liberty, but not his right over the liberty of other persons.

III. Rights are perfect or imperfect.

Perfect rights can be asserted by personal force, or the force of law; imperfect cannot. For instance, a man may resist, by personal force or by the law, violence done in his own person, or in the destruction

of his house; but for the abstraction of an estate, or of portable goods, he can assert his rights only by the force of the law. On the other hand, imperfect rights cannot be enforced. For instance, a poor man has a right to relief; yet if it be refused, he must not extort it. Children have a right to affection and care from their parents, and parents from their children; yet if the rights be withheld on either side, they cannot be recovered compulsorily.

But it may be asked, how can a person have a right to a thing, and yet want the right to use means to obtain it? The answer is by referring here, as elsewhere, to the principle of the general rule, which forbids the use of force for the attainment of an object in itself indeterminate, through the fear of the consequence it would lead to, by the introduction of force in cases where no right existed. For instance, a candidate, the best qualified, has a right to success; but as the qualifications are of an indeterminate nature, there must be some person to determine them. Now, such person cannot be the candidate himself, and still less can he demand by force that, which another candidate can equally command. In like manner, although the poor man has a right to relief, yet as the mode, time, and quantity of the relief are circumstances not ascertained, the relief must not be prosecuted by force. For to allow the poor to judge for themselves in such cases, would lead as a consequence to the general insecurity or loss of property.

Where the right is imperfect, so is the obligation; for the terms are, as shown before, reciprocal.

Obligations are here called imperfect, because others have adopted the same term; which is, however, ill chosen; for it leads to the groundless notion, that there is less guilt in the violation of an imperfect obligation than of a perfect one: for the degree of guilt is determined by circumstances unconnected with the distinction between a perfect and imperfect obligation, the

difference of which turns on the point, whether violence may or not be used to enforce the obligation. He who discourages a worthy candidate commits a greater crime than he who picks a pocket; although, in the former case, he violates an imperfect, but, in the latter, a perfect obligation.

As positive precepts are often indeterminate, and as an obligation is imperfect from the want of determinateness, positive precepts can merely produce an imperfect obligation; and, contrariwise, negative precepts constitute perfect obligations. The fifth commandment is positive, and its duty is imperfect; the sixth is negative, and its duty perfect. Religion and virtue find their voluntary exercise among the former; the laws of society compel the exercise of the latter.

CHAP. XI. THE GENERAL RIGHTS OF MAN.

These rights, belonging collectively to the species, are—

1. To the fruits of the earth.

The insensible parts of the creation are incapable of feeling hurt; and as God has given to man both the desire of food and the means of obtaining it, he, of course, intended us to use the fruits of the earth as food.

2. To the flesh of animals.

This is a different claim; and, as a reason is necessary for depriving animals of their liberty and life, and for inflicting pain, to gratify the appetite, it has been said,—1. That as brutes prey on each other, so man, a brute, only obeys the general law in preying on other brutes. 2. That if animals were not destroyed by man, they would overrun the earth, and drive man from the occupation of it. But, first, the analogy between man and brutes is not correct. Carnivorous brutes cannot, man can, live by other means; and, as in the case of the Hindoos, actually does live without tasting flesh of any kind. Secondly, the calculated increase of animals would not take place naturally; since

many are forced into existence for the express purpose of subsequent destruction. Besides, as in the case of fish, how is man's occupation of the earth endangered by their unlimited increase? The only real defence of such a right is in the permission granted by God to Noah, in the words—'every moving thing shall be meat for you; even as the green herb have I given you all things;'—which last alone was included in the original grant to Adam, in the words—'every green herb shall be meat for you.' But although this extension of the grant over the beasts of the earth, the fowls of the air, and fish of the sea, did not take place till after the flood, we are not told whether the antediluvians refrained or not from the flesh of animals. Abel, we read, was a keeper of sheep; but for what purpose, except for food, it is difficult to say, unless it were for sacrifices: if so, Noah was, probably, like other antediluvians, scrupulous on this point, and consequently received a permission to do what he previously deemed sinful; for otherwise God would have given as a new grant a permission to do what had been practised long ago, without dispute. But even such a permission to destroy will not warrant the liberty to maltreat animals put into man's power.

From reason then and revelation it appears that God intended the fruits of the earth for man's support; but as he did not intend any waste or misapplication of those productions, such acts are, like others more expressly mentioned, wrong, as contrary to God's will. Hence, the conversion of corn-fields into parks for deer, or covers for foxes; the non-cultivation of lands by parties in possession, or the refusal to let them to those who will cultivate them; the destruction or waste of food with the view to increase the price of stocks on hand; the expending on dogs and horses the sustenance of man, or the conversion of grain into ardent spirits; these, and, in short, all acts, by which the food of man is diminished either in quan-

tity or quality, are sinful, as opposed to God's desire for the happiness of his creatures.

This lesson Christ probably intended to inculcate, when he bade his disciples gather up the fragments that nothing might be lost: and this lesson men ought to bear in mind, when, scheming plans for their own individual advantage, they are apt to forget that it is their duty to obtain the greatest quantity of food from their estates, and that not to do so is a sin.

From the same view of the intentions of the Deity, we prove that nothing ought to be exclusive property, that can be enjoyed in common. For example, two or more persons, thrown on a desert island, find an apple-tree loaded with fruit: each may take enough for his own immediate use, and all plead the general intention of the Supreme Proprietor. But none can claim the whole tree; for it must be previously shown that God intended the tree to be given to one or a few individuals. Now this intention can be proved only by showing, that the fruit cannot be enjoyed with the same advantage, when distributed to all, as when confined to one or a few. But this will be true only, when there is not enough for all, or where the article in question requires labor for its preservation and production. But where no such reason obtains, it is an usurpation of general right to confine the use to one or a few.

If a medical spring were discovered on ground belonging to an individual, sufficient to supply all who wished to use it, the owner of the ground, and the discoverer of the spring, found not accidentally but by laborious search, may merit compensation and reward; but no human law would justify the owner in confining to himself the use of God's general gift. In like manner, all attempts to appropriate inexhaustible fisheries to individual nations is an encroachment on the general rights of man.

On the same principle may be settled the con-

tested question, whether the sea be or not free? What is necessary for each nation's safety may be allowed, even to the extent of three leagues from the coast; a limit far beyond the reach of any implements of war, by which the safety of the coast might be endangered.

3. The last universal right is of necessity, or the right to use or destroy another's property, when it is necessary to do so for self-preservation; for instance, to take, without the leave, and against the consent of the owner, goods or chattels, when we are in danger of perishing through want of them; a right to throw goods overboard to save a ship from sinking, or to pull down a house to stop the progress of a fire. This right is founded on the principle, that the institutions relating to property were intended to benefit all, though at the expense of a few; and, consequently, the partial mischief resulting from the violation of a general rule is overbalanced by the immediate advantage. Restitution, however, is due, not to the full value of the property so destroyed, but to the value which it possessed inversely, as the danger was greater.

BOOK III.

RELATIVE DUTIES.

CHAP. I. ON PROPERTY.

If a man saw in a field of corn a flock of pigeons, all of whom, save one, were engaged, not in choosing for themselves the best food, but the worst, and reserving the best for that single pigeon, the weakest and perhaps worst of the flock; and if, while that single pigeon was devouring or wasting at pleasure, he should see, when another hungry and hardy pigeon touched a grain of the hoard, all the other pigeons fly on the intruder and peck it to death, he would see nothing more than what is every day practised among men. In civilised society, ninety-nine persons toil to find superfluities for one, sometimes the least deserving of his species, getting for themselves only the worst and smallest share, and though quietly looking on, while they see the fruits of their labor spent or spoiled by that single one or his minions, joining to hang a man, whose necessities may have led him to take the smallest particle from the general hoard so unequally distributed.

CHAP. II. THE USE OF THE INSTITUTION OF PROPERTY.

This institution, which seems so unnatural, still possesses advantages enough to counterbalance its apparent absurdity.

1. It increases the produce of the earth.

In climates where the earth produces little without

labor, no one would sow if all might reap. Hence, the spontaneous productions of the earth would be the only food of its inhabitants; and a handful of men, as in parts of America, would thus starve on waste lands, which, if cultivated, would feed thousands. In soils naturally fertile, or on coasts where fish abound, and in climates where clothes are unnecessary, a large population may subsist without property in land; but in less favored spots, the want of food, arising from the want of institutions to secure property, leads people even to devour each other.

II. It preserves the produce of the earth to maturity.

If, under a system favorable to the security of property, we find the fruit of a tree exposed to depredation always plucked before it is ripe, it is fair to infer that corn, if sown, would never be permitted to come to maturity, nor would lambs and calves grow up to sheep and cows; because each would think he had better take what he could get, than leave it to another to enjoy.

III. It prevents contests.

Where there is not enough for all, and where no rules exist to settle the share of each, contests alone can regulate the distribution.

IV. It improves the conveniences of life.

By introducing the subdivision of labor, each man is enabled to direct his attention to a particular art, and to exchange the produce of his own labor for that of another, an exchange impossible, unless the produce be secured to the producer: and as by such subdivision each man becomes a proficient in his own art, which he could not be, if his time were taken up by many and different occupations, articles of necessity and ornament are improved in their manufacture;

and as new wants are created, fresh exertions are made and remunerated; so that they, who are the worst off where the laws of property prevail, are better off than the best where all things are in common.

Great inequality of property, abstractedly considered, is an evil; but it is an evil which flows from a greater good; and is only then to be corrected, when it is unconnected with such good.

CHAP. III. THE HISTORY OF PROPERTY.

The first objects of property were the fruits a man gathered, and the animals he caught; then the hut he built, the tools he made, and, subsequently, his flocks and herds. Even Abel, the second from Adam, was a keeper of sheep; which, with oxen, asses, and camels, composed the wealth of the patriarchs, as they now do that of the Arabs. The next object of property was probably a well of water; which in hot countries was from its value a source of frequent contentions;[1] and to dig or discover one was deemed an act worthy of honorable record. Land, at present so important that it is alone called real property, was, when more plentiful, little thought of; but as the people increased, and tillage was resorted to, it rose in value. The first partition of an estate on record is between Abram and Lot, and the terms of it are the most simple: 'If thou wilt take the left hand, then I will go to the right; or if thou depart to the right hand, then I will go to the left.'

There are no traces of property in land in Cæsar's account of Britain; little in the history of patriarchal times; none of it is found amongst the savages of America or Australia; while the ancient Scythians, who appropriated houses and cattle, left their lands in common.

But even this property in immovables was con-

[1] Genes. xxi. 25. xxvi. 18.

fined at first to temporary occupancy: for as soon as a man quitted his hut or cave, and the feeding ground of his cattle, another entered on them, by the same title as his predecessor; and a permanent property in lands, not cultivated by the resident proprietor or his agents, was first settled by the laws of the people, or will of the ruler alone.

CHAP. IV. IN WHAT THE RIGHT OF PROPERTY IS FOUNDED.

To explain the right of property in land, consistently with the law of nature, is no easy task: for as the land was once common to all, by what right could any part of it be taken by one person, to the exclusion of all others?

Many different and consequently unsatisfactory reasons have been given.

One says, that the right of the first possessor rests on the tacit consent given by his contemporaries to such possession, which, being once granted, could not be resumed by the parties so consenting.

But consent cannot be presumed from silence, where the party said to be consenting knows nothing of the matter in question. It is true, the parties in the neighborhood of the spot where such appropriation took place, might have consented: but such consent itself is as much an infringement on the general rights of mankind as the occupancy of the individual himself, and cannot bind other portions of mankind, ignorant of such transactions between the appropriator and his neighbors.

Locke says, that the right to property rests on the natural right of a man to the produce of his own labor; for by the labor of cultivation consequent on the occupancy, the labor bestowed on the soil is so mixed up with it, that the man cannot be deprived of one without the loss of the other, which is manifestly his own.

But this reason will hold good only where the

value of the labor gives nearly the whole value to the ground, as in the case of a waste, which a man should pare, burn, and plough for the growth of corn not previously produced; or where the labor confers the greatest part of the value, as in the case of game or fish, which, till caught, are of no value to any body, but which are caught only by personal exertions. But even this right to possess, founded on the labor bestowed, can give no right to hold in perpetuity, when the cultivation and its effects shall have ceased.

Another and better reason is, that, as God has provided the ground for all, he has given leave to any to take what he pleases, without the consent, tacit or not, of others.

But this permission can apply only to the necessaries of life, which may be enjoyed by the individual, but not at the expense of others, who, by such appropriation, may be pinched for food.

Such are the reasons usually assigned; and were they perfectly unexceptionable, they would scarcely vindicate the present claim to a right of property in land, unless it were also shown that the possession did actually take place in some of the ways here supposed, and that justice has been done in every subsequent transmission; for if one link in this evidence fail, no title posterior to such failure can be held to be good.

The real foundation of the right is the law of the land. God intended the earth for man's use. This intention cannot be fulfilled without establishing property: he therefore willed the institution of property. But such institution cannot be effected, if the law of the land does not regulate the distribution; consequently, it is 'right,' or consistent with the will of God, for any individual to possess as much as the law of the land gives him; and, consequently, as the right does not depend on the manner or justice of the original acquisition, nor its subsequent transmission,

so neither can it be taken away for any defect in the title not cognisable by law.

Nor does the owner's right depend on the expediency of the law. An estate on one side of a brook may descend to the eldest son, on the other side to all the children conjointly. The claims of both inheritances are founded equally in law, though the expediency of the law itself cannot be the same in both cases.

But it will be said, that as the right of property depends only on the law of the land, a man may rightfully keep whatever the law will not compel him to restore; and thus, if a debt be not demanded for six years, since the law exonerates the debtor, he is not bound to pay it; or if a minor contracts a debt which the law will not compel him to pay, he is relieved from paying it, morally as well as legally.

The answer in this and similar cases is, that no rule of law, intended for one purpose, is to be applied to another. For instance, the limitation of time was intended to protect men from demands so antiquated, that the evidence of its discharge was probably lost. If then a man be ignorant or doubtful on this point, he may with strict justice plead in bar the legal limitation, but not, if he knows the debt to be undischarged; because in the one case he does, in the other does not, apply the law for the purpose for which it was intended. Again, in the case of the minor, the limitation of the law was intended to guard the inexperience of youth against impositions. If, therefore, a minor has contracted a debt, which carries with it the suspicion of imposition on the part of the creditor, he may justly plead his minority; but not so, if there be no such ground of objection.

As property is the principal subject of 'the determinate relative duties,' it has been first discussed From these we proceed to

CHAP. V. PROMISES.

1. Whence the obligation to perform promises arises.
2. In what sense promises are to be interpreted.
3. In what cases promises are not binding.

1. The advocates of a moral sense suppose the obligation to keep promises an innate sense: we, on the contrary, deduce the necessity of the obligation from its utility.

Men act from expectation, which is generally determined by the assurances of others. Unless, then, such assurances are certain, the conduct which they regulate must be uncertain also. To prevent, therefore, the dependence of conduct on chance, a confidence in promises is essential to social intercourse. But there would be no confidence in promises, unless men were obliged to perform them. The performance, therefore, being essential to general happiness, becomes an obligation.

But it has been said that if promises were never kept, a general distrust would take place equally useful. But this has been said by those who do not perceive how much in every hour man must and does trust to others. On the strength of such confidence each man regulates his actions; and the very dinner we eat depends on the trust we repose in the butcher to send the meat as ordered in, the cook to dress it, and the servant to put it on the table by a stated time; and so in the most important events of life, the intervention of promises, and the necessity of keeping them, are really not greater, though accidental circumstances cause them to appear so.

II. In what sense promises are to be interpreted.

Where a promise admits of more interpretations

than one, it is to be performed ‘ in the sense in which the promiser apprehended that the promisee received it.’

The sense which the promiser actually intended cannot always govern the interpretation of an equivocal promise, because the promiser might raise expectations he could not be obliged to satisfy. Much less is it the sense in which the promisee actually received the promise; for the promiser might be drawn into engagements he never designed to fulfil. It must, therefore, be taken in the remaining sense, viz. that in which the promiser believed the promisee accepted it; and this last sense will always agree with the intention of the promiser, except where a collusion is intended by the equivocal nature of the words of the engagement.

Temures promised the garrison of Sebastia, that if they would surrender, no blood should be shed. The garrison surrendered, and Temures buried them all alive. But although the agreement was kept literally, still as it was not kept in the sense in which Temures knew the garrison received it, he was guilty of a breach of promise.

Since, then, the obligation to perform a promise depends on the expectation raised, any act, by which expectations are designedly raised, partakes of the nature of a distinct promise, and creates a similar obligation for its due performance. He, for instance, who takes a poor child, and educates him to fill the situation of a child not poor, is bound to give him the means to fill such situation, as much as if he had directly promised to do so; and a minister of state, who by his notice raises an expectation of patronage in a dependent, is bound by such notice to provide for the dependent.

On this principle rests the obligation of tacit promises.

The intention may be declared simply, or conjointly with an engagement to perform. In the for-

mer, the duty is satisfied, if you were sincere at the time, though the intention be subsequently changed; in the latter, the power to change exists no longer. To avoid, then, the inconvenience to both parties from the consequence of raising expectations which may not be gratified, the safest way is to clothe the intention in language not too precise, especially if there be no good reason for communicating your intentions at all.

III. In what cases promises are not binding.

1. Promises are not binding where the performance is impossible.

This excuse for non-performance is valid only, if the impossibility be unknown to the promiser when he makes the promise; otherwise, he is guilty of fraud in leading the promisee to expect what he, the promiser, knows cannot be performed; as in the case of an incumbent, who promises to resign a living, knowing previously that the bishop will not accept the resignation. In such cases, as the promise cannot be performed in fact, the promiser must repair the loss done to the promisee from such non-performance. When the promiser himself occasions the impossibility, he is guilty of a direct breach of promise, as, for instance, when a soldier maims himself to get discharged.

2. Promises are not binding where the performance is unlawful.

1. Where the illegality is known.

If, for instance, a person promises to murder another, or betray his interests, as the performance would be an unlawful act, the engagement is void from its commencement, in consequence of a prior engagement not to do such act. There may be guilt in making such promises, but there can be none in breaking them; and if, in the interval between the promise and its performance, such illegality presents itself, the promise ought to be broken.

2. Where the illegality is not known.

If, for instance, a woman promises marriage; but, previous to the marriage, discovers that her intended husband has already a wife living, the promise becomes void: for, as it was given and received on the presumption that the performance was lawful, the legality becomes a condition of the promise, and on its failure the obligation ceases. So in the case of Herod's promise to his daughter-in-law, the promise was not unlawful, in the sense in which Herod intended it to be taken; but the illegality attending its literal performance discharged Herod from the obligation of such performance, in consequence of a superior previous obligation.

The rule that promises are void when the performance is unlawful, extends also to imperfect obligations. Thus, if a vote be promised to one candidate, and, on the appearance of a better, it is found that the electors are bound by oath to select the most deserving, the previous obligation of the oath cancels the obligation of the promise.

The specific performance of promises is a perfect obligation; and some moralists have decided, that where a perfect and imperfect obligation clash, the imperfect must yield; whereas, in such a case, the obligation which is prior in time ought to prevail.

As the illegality of the act does not consist in the performance of the promise, but in the motives that led to the promise, the reward of crimes even, if promised, must be paid; for after the mischief has been once done, it is not increased by the payment of the reward. Hence, if the motive be even criminal, the obligation is not cancelled; as in the case of a person, who, having promised to marry a woman after the death of his wife, then sick, refused, when the wife was dead, to fulfil the engagement; correctly, said a moralist, to whom the case was referred; but incorrectly, on the principles stated above; for though the

motives might be immoral which led to the promise, its performance was lawful, and therefore obligatory.

A promise cannot be deemed unlawful where it produces, when performed, no effect beyond what would have taken place, had no such promise been made.

Hence promises of secrecy ought not to be violated; for although the public would derive advantage from the discovery, yet as the information would not have been imparted on any other condition, the public lose nothing by the performance of the promise, which they would have gained without it.

3. Promises are not binding when they contradict a former promise.

Because the performance would be then unlawful.

4. Promises are not binding before acceptance, i. e. before the promisee has knowlege of it.

For the obligation to perform rests on the expectation raised. But there can be no expectations, where there is no knowlege of the promise. Nor is the performance obligatory, even if the promisee has a knowlege of the promise, obtained through the medium of a party not empowered to communicate it: for that which constitutes the essence of a promise is here wanting, an expectation raised voluntarily.

5. Promises are not binding which are released by the promisee.

This is evident; although it may not be evident who is the promisee. The doubt may however be solved by considering that if a promise be given to A direct for the benefit of B, then A is the promisee; but if to A only indirectly, as an intermediate agent for B, then B is the promisee. Promises to one person for the benefit of another are not released by the death of the promisee; for his death neither makes the performance impossible, nor implies his consent to release the promiser.

6. Erroneous promises are not binding.

1. Where the error proceeds from the misrepresentation of the promisee.

For instance, a beggar solicits charity by a story of distress, and a promise of relief is given. But previous to the performance of the promise, the distress is found to be fictitious. The promise is cancelled. For it was given on the supposition of the truth of the story; but that condition failing, the promise ceases to be obligatory. In like manner, a person is engaged on the representation made respecting the labors of an office; a promise is made to undertake it; but if the labor be greater than the promisee represented, the promiser is released.

2. When the promise is given on a condition not absolutely expressed, but understood both by the promiser and promisee.

For instance, if a father, hearing the news of his son's death, promises to make his nephew his heir, he is, on the news proving false, released from his promise; because, as the nephew knew that the promise was in reality conditional, though not so expressed, the expectations raised were subject to a condition, which formed an essential part of the promise.

In other cases, no errors on the part of the promiser can cancel the engagement. For example, a vote is promised to one candidate; afterwards another offers himself, whom the promiser would prefer; but his vote must follow his promise. The error was on the part of the promiser, who must abide by his error: the promisee, who made no mistake, must not suffer by it: as the promise was given without a condition, it cannot be affected by a subsequent event; hence, if a man promises a certain fortune with his daughter, he is bound to perform the promise, even though his means be less than he thought them to be when he made the promise.

The case, however, of erroneous promises is attended

with this difficulty, that if every mistake be allowed, the rule becomes too loose; but if the rule be drawn too tight, the result must be hardship and absurdity in its application.

Whether promises extorted by fear are binding is a doubtful point; for as the obligation of all promises rests on the utility of mutual confidence, whatever tends to check that confidence is wrong; but if, on the other hand, such confidence lead to general mischief, it ought not to be insisted on; and it is in the balance of opposite good and evil that the difficulty rests. For instance, a man, threatened with death, saves his life on his promise to do a particular act. This safety is a good consequence of the confidence placed by the promisee in the promiser. But the performance of promises, thus extorted by fear, leads to a repetition of such acts of violence. This is a bad consequence. Between these two consequences moralists have to choose—a choice not yet decided on.

In other cases, where a prisoner is suffered to go at large on promise of good behavior, such a promise is binding, not, as some moralists say, because the imprisonment is just, but because the utility of confidence in such promises is the same as the utility of confidence in the promises of persons at liberty.

Vows are promises to God. The obligation to keep them depends not on the principle which regulates other promises, but on the want of reverence to the Deity, which their non-performance indicates.

The Scriptures give no encouragement to make vows, much less to break them when made. The few vows we read of in the New Testament were religiously observed. Of Jephtha's vow, as commonly understood, the obligation was not binding, because, by its performance, an act, previously unlawful, was committed.

CHAP. VI. CONTRACTS.

A contract is a mutual promise. Hence, the law which regulates promises regulates contracts also.

Hence, as in promises the obligation is measured by the expectation raised voluntarily by the promiser, so in contracts, whatever is expected on one side, and known to be so expected on the other, is a condition essential to the contract.

The several kinds of contracts may be exhibited at one view, thus :—

- Contracts of
  - Sale.
  - Hazard.
  - Loan of
    - Inconsumable Property.
    - Money.
  - Labor.
    - Service.
    - Commissions.
    - Partnerships.
    - Offices.

CHAP. VII. CONTRACTS OF SALE.

The rule, which requires to be most strictly inculcated, is, that the seller is bound to disclose the faults of what he offers for sale.

To tell a falsehood direct is confessedly an immoral act. To tell a falsehood indirectly, by concealing the truth, is likewise an immoral act. Now, to say that wares possess good qualities which they do not, is to tell a falsehood direct; and not to say that they possess the bad qualities which they do, is to tell a falsehood indirectly, by concealing the truth. Hence, as the moral qualities of actions differ only in their motives and effects, if the motives and effects be the same, the actions are, morally speaking, the same. But as in these cases, the motives are the same, viz. benefit to the seller from the higher price, and the effects the same, viz. injury to the buyer from an inferior article, or, at least, not such as the representation

warranted; it is equally a fraud to magnify the qualities of wares, as to conceal their defects.

The obligation is greater, and, if performed, the honesty greater also, to tell the truth, when the goods are such, that the faults cannot be detected except by their use.

From this charge of dishonesty are to be excepted sales of goods, where the silence of the seller implies some fault in the article, as in the case of a horse sold without warranty.

Connected with this principle of dishonesty is the practice of passing off bad money, for which it is usually pleaded, that, as it was received for good, it may be passed for good; a plea similar to that given by a person, who having been robbed himself, reimbursed his loss by robbing another.

When no monopoly or combination exists, the market price is always the fair price; which may, therefore, be fairly demanded. Hence, to say provisions are at an unreasonable price, is an absurdity; for if the price were unreasonable, none would give it.

If a man asks for goods more than the market price, such a demand is deemed dishonest; yet, as the goods are the man's own property, he has a right to put what value he pleases on them. Still, as the very act of tendering goods for sale carries with it the implied condition of their being to be sold at the market price, he is bound to sell them at such price, unless there be a specific understanding between the parties of a contrary nature; and in this case, any price may be asked without the impeachment of honesty.

If the article sold be accidentally destroyed or injured between the sale and delivery, the loss must fall on the party who undertook the risk of its safe custody. For instance, if, after the purchase, the seller offers to deliver it, and the safe delivery forms a part of his responsibility, on its failure, payment may be

resisted or reclaimed; but if the buyer requests the seller to keep charge of the article, he takes the responsibility on his own shoulders, and cannot resist or reclaim payment, except for injury done wilfully.

But in this, as in other cases, custom determines, if not more correctly, at least more effectually, than casuists can. Not that custom of itself possesses any authority to decide between right and wrong, but only places the parties where they were presumed to stand, on points relative to the tacit conditions of the contract; and by such custom alone can it be decided, frequently, at what moment the risk of the buyer ends, and that of the seller commences.

CHAP. VIII. CONTRACTS OF HAZARD.

By contracts of hazard are meant Gaming and Insurances.

Some say that one side ought not to have any advantage over the other; but this is scarcely possible. The perfect equality, which this rule requires, is seldom, if ever, to be met with. Nor is it requisite, if practicable; for one party may, if he pleases, give the whole stake, and of course less than the whole; or, in other words, he may destroy the natural inequality of the parties by giving an artificial advantage to the weaker, and thus make the chances of winning equal to both.

The proper restriction is, that neither side have an advantage unknown to the other; for though the event be still uncertain, such advantage has its value; and so much of the stake as that value amounts to, is taken from the other party without his knowlege or consent. If, for instance, in a game of whist, one party has greater skill, the other knows that such a superiority is possible, and takes his measures accordingly; but if the superiority be not in skill, but in acts unknown to, and not even suspected by, the other, such as looking into his opponent's hand, or making concerted

signals with his partner, the advantage is an act of dishonesty, and the contract to pay the loss is void: and so in other cases where chance enters, all advantage obtained, except from sources which one party previous to the contract knew, or suspected, the other might possess, vitiates the contract. Hence, in the case of insurances, where the underwriter enters on the risk, dependent solely on the representations of the insured, if such representations be designedly incorrect, the policy becomes void; because the insured has not, in fact, completed his part of the contract, to tell the whole truth.

CHAP. IX. CONTRACTS OF LOANS OF PROPERTY INCONSUMABLE.

When the article lent is to be itself restored, as a book or horse, the loan is of property inconsumable; consumable, when not the thing itself, but its value is to be returned, as money, or articles in their nature perishable.

If the article lent be damaged, the loss of the damage will fall on the lender, provided such damage occur by using the article for such purposes as the article was lent for; because the lender contemplated the possibility of such damage previous to lending. But if the damage accrue by the negligence of the borrower in the use of the article lent, or in its misapplication to other and new purposes, the borrower must stand to the loss; for here the lender neither knew nor suspected such misapplication of the loan.

In the case of an estate or house, lent on lease for a term of years, the increase or diminution of its value may be such as to make the rent a positive gain or loss to the landlord or tenant. To ascertain to whom the advantage or disadvantage belongs, we must inquire, if the alteration were expected by the parties; for if so, the hirer must take the consequences of benefit or loss; if not, the owner. For instance, as the uncertainty of

produce in successive seasons is expected by both parties, the hirer receives both the benefit of a good, and suffers the loss of a bad season. But if the loss be occasioned by an event, which the parties could neither foresee nor avert, as any convulsion of nature, or the irruption of an enemy, the loss shall fall on the owner; who, in like manner, is to receive the benefit arising from similar unexpected changes. This determination rests on the reason that events foreseen form a part of the contract; but that with respect to events not foreseen, the contract is as if none had been made.

CHAP. X. CONTRACTS OF MONEY-LENDING.

The loan of money, like that of other property convertible into money, may be paid for.

The objection to usury or interest, once prohibited by law in Christendom, arose from the Mosaic enactment, 'Thou shalt not lend on usury to thy brother. To a stranger thou mayest lend.' But this prohibition is now supposed to be a part of the polity intended peculiarly for that nation, with a view to preserve in the same family its share of the property originally distributed to each tribe, and similar in effect to the law, which required a man to marry his brother's widow if left childless, and to another law, which enacted that in the year of jubilee alienated estates should revert to the original proprietor.

This interpretation is confirmed by the distinction made between the brother and a stranger; a distinction which God would hardly have made had he intended the law to be of universal application.

The Roman law once allowed twelve per cent as the rate of interest, which Justinian reduced to four. In the reign of Elizabeth, the first act which tolerated usury restrained the rate to ten per cent, which, in the time of James I. was reduced to eight; then, by Charles II. to six, and by Anne to five, on pain of forfeiture of treble the amount.

The policy of these regulations is to give the borrowers the power to obtain aid at a moderate rate, and to guard them against the extortions of avaricious money-lenders.

If money be borrowed in one country, how ought it to be paid in another, where the relative value of the metals is not the same? For instance, in England and the East Indies the value of the metals is different: if then, one hundred guineas be borrowed in England, will a hundred guineas liquidate the debt paid in India? The answer is, that since the money was lent with the understanding that neither the lender nor borrower should suffer, as the loss of one would be the gain of the other, the party so gaining is bound to reimburse the loser. Hence, if the value be less in India, the borrower in England must make good such loss by an increased sum; if it be greater, the lender must reimburse the borrower by receiving a diminished sum. If the value be affected by an act of the state, and if the alteration would have extended to the identical pieces lent, although they had remained in the hands of the lender, it is enough to return an equal number of similar pieces, or their present value in any other coin. For instance, if twenty guineas had been lent, and the guinea were reduced to twenty shillings, then the repayment might be made by twenty pounds: but if the coin were debased, then respect ought to be had to the comparative value of the old and new guinea.

Whoever borrows money is bound to repay it, and to effect such repayment, is bound to make every sacrifice of a pecuniary kind, by turning into money all available assets, the moment he perceives no reasonable prospect of satisfying his creditor without such sacrifice. Nor has the debtor the right to delay the repayment; for by such delay the creditor depends on the uncertain contingency of the debtor's life; a condition, which neither party anticipated originally in the contract for the loan.

The law which authorises the imprisonment of an insolvent debtor, has been represented as a gratuitous cruelty, which benefits neither the creditor nor community. If the incarceration of the debtor were merely to satisfy the creditor's feelings of revenge, the motive and the act would be equally unjustifiable. But if it be viewed as a public punishment, its justice will be apparent. The frauds relating to insolvency are as necessary to be punished as frauds of other kinds. Nor is the obstinacy of debtors, who will not, when they can, pay their debts, less deserving of punishment. The only question is, whether the power of imprisonment should rest with the exasperated creditor. Now the frauds are so various and versatile, that discretionary power alone can reach them; nor will such power be effectually exercised, unless entrusted to the creditor alone.

But as imprisonment is a punishment, and as punishment presupposes crime, the imprisonment for insolvency, when such insolvency is the result of acts over which the debtor had not any or only a small control, is a manifest wrong; and for a creditor, provoked by such loss, to relieve his own pain by inflicting a greater on the creditor, is inhuman.

Any alteration of the law, which should distinguish between fraudulent or not fraudulent acts of insolvency, would be an improvement; but a total repeal of the law would be a greater hardship to the needy than even its present rigor. For as the power to coerce is a security to the creditor, the loss of that, in the case of a repeal, must be supplied by some other security, which the needy, though honest, being unable to give, would thus be deprived of the aid of the loan. Now as persons without capital must buy on credit before they can sell, in the absence of loans, both he who has and he who wants the funds for trading would be unemployed. Hence, a greater evil would accrue

from the sufferings of the ninety-nine wanting a loan, than from those of the remaining hundredth, who, after having obtained a loan, becomes insolvent, and is then left to the vengeance of an exasperated creditor.

CHAP. XI. CONTRACTS OF LABOR.—SERVICE.

In England service is voluntary and by contract; but as the contract involves many particulars as to work, food, treatment, and pecuniary recompense, a few only, and leading points, are noticed in the contract, and the rest are left to the custom in such cases.

A servant is not bound to obey the unlawful commands of his master; for the obligation depends on his promise; but this does not extend to unlawful acts.

Hence, the master's authority is no justification of a wrong done by the servant for his master; for the servant's own promise, on which that authority is founded, would be none.

Clerks and apprentices ought to be employed only in the business which they were to learn; for instruction is their hire; and to deprive them of the opportunities of instruction, for the purposes of their employer, is to rob them of their wages.

The master is responsible for acts done by his servant in the ordinary course of employment; for they are done under a general authority equivalent to a specific command. Thus a banker is responsible for money paid to his clerk, but not to his footman; because it is the business of the former, not of the latter, to receive money for his master. So if a servant be sent by his master to a shop to buy goods on credit, whatever goods he may afterwards obtain for himself the master is answerable for; because the seller cannot tell whether the goods are, or not, required for the master.

In other cases, the law, rather than moral justice, ordains that the master be responsible for the acts of his servant, even when the servant is a free agent; as, for instance, when an innkeeper's servant robs a guest, or a farrier's man lames a horse, or a coachman injures a passenger or passer-by, the innkeeper, farrier, and coachman's master are respectively liable.

Connected with the contract for service, is the duty of giving a character to a servant, in the performance of which most persons, through mistaken views of kindness, do in truth act wrong. A character, if not true to the letter, is a fraud on the party who accepts it, and the act is the more ungenerous as the person deceived is a stranger. But to misrepresent secretly a person's character to others, with the view of retaining for one's own use the services of such employee, is cruel, immoral, and cowardly; cruel, because the injury is done without the power of remedy; immoral, because it destroys the motives to good conduct; and cowardly, because a similar act, in the case of equals, would, by the law of honor, expose the party offending to the loss of character or life.

A master of a family is bound not to permit among his domestics, vices which he might restrain. This arises from our duty to prevent misery at all times, of which vice is the inevitable forerunner. This care of his household on the part of Abraham met with the approbation of God;[1] and indeed no authority is so well adapted for this purpose, because none operates on the subjects of it with an influence so direct.

The language of the Christian church, touching the relative duties of masters and servants, breathes a spirit of liberality, little known in ages when servitude was slavery; and which results from the habit of viewing both parties in a common relation to their Creator,

[1] Gen. xviii. 9.

and a future state. 'Servants, be obedient to your masters, as unto Christ; not with eye-service, as men-pleasers, but doing the will of God from the heart; knowing that whatsoever good thing any man doeth, the same shall be received of the Lord, be he bond or free. And, ye masters, do the same thing to your servants, knowing that your Master also is in heaven; neither is there a respect of persons with him.'[1] Nor is the policy of this view less than its liberality; for by teaching servants to consider God as their present task-master and future rewarder, a steady and cordial obedience is produced, in place of that constrained service, which cannot be trusted out of sight, and is therefore well called eye-service; while the exhortation to masters to consider themselves accountable is equally seasonable.

CHAP. XII. CONTRACTS OF LABOR.—COMMISSIONS.

He who undertakes another's business engages tacitly to employ on it the same care as if it were his own; but he promises no more than this. If he has done so much, he has discharged his duty, even though it should afterwards appear that greater exertion would have benefited his employer more.

The chief difficulty of an agent is to decide whether he may or may not depart from his instructions, when the object of the commission presents to his mind a view different to that, which he knew his employer had, when he, the agent, was charged to execute such commission. The latitude allowed must vary according to circumstances. For instance, an attorney, sent to complete the purchase of an estate at a certain price, finding the title defective, refuses to pay the money; and properly so. On the other hand, an officer is ordered to perform a particular duty, which

[1] Ephes. vi. 5—9.

he is satisfied his commander would not have ordered, had he known the real state of affairs; yet is he bound to follow implicitly his instructions.

What is trusted to an agent may be lost or damaged by accident when in his possession. If he receives no pay, he is not answerable for the loss: for he gives his labor for nothing, and cannot be expected to give security for nothing also. But if he receives any pay, the decision respecting his responsibility will rest on the apprehension of the parties respecting the terms of the engagement; and this again is regulated by custom. For instance, whether a carrier be or not liable for the loss of goods entrusted to him, is a question of custom alone; but if the carrier stipulates that he will not be accountable for goods of a certain description, he engages, in fact, to be accountable for all others of another description; because the limitation of one part is the non-limitation of others. On the other hand, any caution on the part of the owner to guard against risk, exonerates the carrier, by showing that the sender was aware of the risk, and that he took it on himself.

Universally, unless a promise direct or indirect be proved against the agent, the loss must fall on the owner.

The agent may accidentally suffer in person or purse by the business he undertakes; still he can claim no compensation for such loss; for the danger was foreseen or not. If the latter, as neither the agent nor employer expected such compensation, none is due; if the former, as the business was undertaken with the knowlege of the risk, the remuneration was of course regulated with reference to such risk, and a part of the remuneration is in fact a compensation for the loss incurred.

CHAP. XIII. CONTRACTS OF LABOR.—PARTNERSHIP.

On the subject of partnership, the only point of doubt is the division of profits, where one party contributes money, and the other labor.

Rule. From the value of the partnership-stock deduct the sum advanced, and divide the remainder, which is the profit, between the two partners, in proportion of the interest of money to the wages of labor, allowing such interest as money might fetch on the same security, and such wages as would be given for the same labor. But if there be no profit, then the monied partner loses his interest, and the working one his labor. If the original stock be diminished, the working partner loses only his labor, whereas the monied partner loses his capital and interest; but for this disadvantage must be set off the chance of greater profit arising from the rate of interest in his favor.

In partnerships, however, the proportion, in which the profits are to be divided, is generally expressed in the deed itself. But the division, to be equitable in such cases, must pursue the principle here laid down.

All the partners are bound by the act of one; for that one is supposed to be the agent of the others.

CHAP. XIV. CONTRACTS OF LABOR.—OFFICES.

In many offices, such as fellowships, head-ships of schools, and in those of corporate bodies, there is a two-fold contract; one has regard to the origin of the office, the other to the electors to it.

With regard to the origin, the officer is bound to do all that the deed, by which he holds office, requires him to do absolutely: the contract with the electors is to do all, that has been customarily done by the person in office, for such is the expectation of the electors, which the officer elected must satisfy, or, previous to election, stipulate for their non-performance.

The electors can excuse the officer from the performance of only customary duties: for as their power cannot annul the positive injunctions of the original deed, so neither can they stipulate with the candidate for the non-performance of duties positively enjoined.

As it is both difficult, and yet important, to know what offices may be performed by deputy, the cases need only be stated where a deputy is not allowable.

An office cannot be discharged by deputy,

1. Where a particular confidence is placed in the individual, as a judge, commander-in-chief, or a guardian of property or persons.

2. Where the custom hinders.

3. Where the deputy cannot legally perform all the acts of the principal.

4. Where general mischief would arise by the discouragement of merit from such substitution of the deputy for his principal.

To this head belongs the question respecting the non-residence of the clergy. If the officiating curate does all that his principal is bound to do, and does it as well, the only objection to the substitution of the deputy is the mischief done to the church by the want of encouragement shown to the conscientious and capable curate. But this objection will be, if not done away, at least diminished considerably, if it appear that the rector or vicar be engaged in employments of equal importance to the interests of religion: for the revenue of the church may be considered as a common fund for the support of the national religion; and if a clergyman be serving the cause of that religion in one place, it cannot matter from what place are derived the funds for his support. Now, this way of viewing the property of the church is the more equitable, as the value of particular preferments bears no proportion to the particular labors; and, conse-

quently, while some are overpaid, others are underpaid.

Such clergymen, then, as are employed in religious duties, or in those subsidiary to religion, may claim an indulgence, which cannot be allowed to those whose employments bear no relation to religion, and whose cassock alone makes a clergyman, as a cockade does a soldier. In such cases, the misapplication of the church revenues is little better than a robbery; while the impoverishment of the fund, by converting the best share of it into annuities for the gay and illiterate youth of great families, must tend to stifle and starve the little clerical merit left to the profession.

All legal dispensations from residence suppose that the absentee is detained from his living by some engagement equally important. Hence, in a case where no such reason can be pleaded truly, should it be said that, as this is a question of property to be regulated by law, if the law which gives the living excuse also the residence, the clergyman is morally excused, we reply, that as the law does not excuse by intention, all other excuses are fraudulent.

CHAP. XV. LIES.

A lie is a breach of promise; for he who speaks seriously to another, tacitly promises to speak the truth, because he knows the truth is expected; or the obligation to veracity rests on the ill consequences resulting from a breach of it. The ill consists in some specific injury to an individual, or the general injury to society, by the destruction of mutual confidence. Hence, a lie may in its tendency be mischievous, though harmless in its individual application.

All falsehoods are not criminal.

1. Where no one is deceived, as in tales, where the speaker means to divert merely, or in servants denying their master, or an advocate asserting the justice of his

client's cause; because in these and similar cases no confidence is destroyed, for none was reposed; no promise violated, for none was given, to speak the truth.

2. Where no general inconvenience can arise from the want of confidence, as in the case of a falsehood told to a madman or robber; for here the inconvenience is only to individuals, which is balanced by the advantage gained by individuals also; nor can any consequences generally hurtful be drawn from such insulated falsehoods.

Hence, it is allowable to deceive an enemy by false colors, false intelligence, and other deceptions, in time of war, but not during a truce; for in the latter period confidence is, in the former is not, placed in the acts of either party. Hence, too, the immorality of falsehood in hoisting feigned signals of surrender or distress; for, on the faith of such signals, one opponent lays down the character of a foe for that of a friend, and expects that the other has done so likewise. Here then is a deception during a period of apparent truce, and, consequently, wrong; because the general consequences of such conduct would be to disbelieve such signals, and to increase the sum of the misery of towns besieged, or of ships in distress.

Some lies, harmless in their motive, may become mischievous in their effects, and are, consequently, to be avoided, as morally wrong; such, for instance, are the falsehoods told by persons, who continually give exaggerated accounts of their own or others acts. Such falsehoods, if inoffensive in other points, are wrong, as tending to produce in the speaker the habit of lying. The disregard to truth, shown in matters of no importance, tends to destroy confidence in his veracity, where his narrations are connected with the promotion of his own interests, or the depreciation of others. Now, since much of the pleasure, and all the benefit of conversation, depends on the existence of such confidence, the want of it will only serve to per-

plex the hearer, uncertain to what extent he ought or ought not to believe.

Pious frauds, as they are improperly called, such as the forgery of new, and the interpolation or castration of old books, counterfeit miracles, and pretended inspirations, though all done with a good design, are foolish and immoral; the latter, as tending to destroy confidence in documents really genuine; and foolish, as missing the very object aimed at. Christianity has suffered more injury from this than all other causes put together.

As there may be falsehoods which are not lies, so there may be lies without the appearance of direct falsehood. Of this kind are prevarications, which are falsehoods in reality, though not in appearance, from being disguised under the ambiguity of language. But as it is the wilful deceit that makes the lie, the deceit is wilful, when the words are not true in the sense in which the hearer does and must take them, according to the custom of the language.

A man may also act a lie, as by pointing to a wrong direction, when asked the road; or where a tradesman shuts up his windows to induce his creditors to believe that he is abroad; for to all moral purposes, speech and action are the same, the former being only a mode of the latter.

There are also lies of omission. For instance, if an historian of the reign of Charles I. wilfully suppresses evidence of that prince's despotic measures, he may be said to lie by omission; for, by the very title of his book, he promises tacitly to tell all he knows of the truth of the events of that period.

CHAP. XVI. OATHS.

I. Forms of oaths. II. Signification. III. Lawfulness. IV. Obligation. V. What oaths do not bind. VI. How oaths are to be interpreted.

1. The forms of oaths, like other religious ceremo-

nies, have in all ages varied, consisting generally of certain words, accompanied with a bodily action.[1]

Amongst the Jews, the juror held up his right hand towards heaven. Hence, we find in Psalm cxliv. 'Whose right hand is a right hand of falsehood.' The same form is retained in Scotland still. An oath of fidelity was taken amongst the Jews by the servant putting his hand under the thigh of his lord, as Eliezer did to Abraham;[2] whence, probably, is derived the present form of doing homage, by putting the hands between the knees and within the hands of the liege.

Amongst the Greeks and Romans, in private contracts, the parties took hold of each other's hand, whilst they swore to the performance; or they touched the altar of the God by whose divinity they swore: but on more solemn occasions, they slew a victim; and as the beast was struck down with certain ceremonies, the parties were said, as in English, 'to strike a bargain.'[3]

The forms of oaths differ in Christian countries; but in none do they convey either the meaning or sanctity of an oath worse than in England. Here, the juror, after repeating the promise or affirmation which the oath is intended to strengthen, adds, 'So help me God.' The force of this formula rests in the particle *so*, that is, on condition of my speaking the truth, or performing the promise, may God help me, otherwise not. The juror, while he hears and repeats the words of the oath, holds his right hand on a Bible, or other book containing the four Gospels, and, at the conclusion of

[1] It is commonly thought that oaths are denominated *corporal* oaths from the bodily action which accompanies them, of laying the right hand on a book containing the four Gospels. This opinion, however, appears to be a mistake; for the term is borrowed from the ancient usage of touching, on these occasions, the *corporale*, or cloth which covered the consecrated elements.

[2] Genes. xxiv. 2.

[3] In Greek τέμνειν ὅρκον: in Latin 'ferire pactum.'

the oath, kisses the book: but this act seems to be done rather out of reverence to the book, than as forming a part of the oath, and is similar to the practice in the popish ritual, where the priest kisses the Gospel before he reads it.

But it is not so much the form of the oath, as the levity with which it is administered, that has produced a general disregard to the sanctity of the obligation; to say nothing of the multiplicity of frivolous oaths, especially those connected with the revenue. A pound of tea, for instance, cannot travel from the ship to the consumer without costing half a dozen oaths; and the highest and lowest functionaries, in church and state, are equally sworn into office. If some security beyond a man's word be required, let the law annex, if it will, penalties to direct falsehoods and indirect prevarications; but let it spare the solemnity of an oath.

II. Whatever may be the form of an oath, its signification is the same. God is called to witness, or notice, what we swear; and his vengeance is invoked on, and favor renounced by, our falsehood in word or deed.

III. Quakers and Moravians refuse to swear at all, in obedience to Christ's prohibition, 'Swear not at all,' Matth. v. 34.

But this prohibition, it would seem, was not meant by Christ to extend to judicial oaths.

For, 1. it does not appear that the Jews, in judicial oaths, ever swore 'by heaven,' 'the earth,' 'Jerusalem,' or 'their heads;' and, consequently, judicial oaths could not have been alluded to here: 2. the prohibition expressed by 'not at all' is to be understood as in conjunction with, not separated from, the preceding words, 'heaven,' 'earth,' 'Jerusalem,' and 'head;' that is, Do not swear, says Christ, by any of these forms, for all are equally reprehensible; although a distinction has been made by some between

swearing by the name of God, forbidden in the Decalogue, and other oaths not forbidden there; a distinction without a difference; because all those things bear the same relation to God, that his name does: 3. Christ himself did not make any objection to a judicial oath, when abjured by the living God, to say whether he was, or not, the Christ: and, 4. St. Paul himself twice [1] calls on God to witness to the truth of his assertions, and thus in reality takes an oath: and, lastly, the author of the epistle to the Hebrews, vi. 16. speaks of the custom of swearing judicially without any mark of disapprobation.

The prohibition, then, was meant to apply not to judicial oaths, but to wanton and unauthorised swearing in common discourse.

IV. Oaths are nugatory, unless we believe that God will punish false swearing more severely than a common falsehood: now, that he will do so, is probable, from considering that,

1. Perjury is a more deliberate sin. The juror confesses to his belief in God's existence: his perjury, therefore, proves his contempt of God's power. But with a common falsehood is connected neither the belief of God's existence nor contempt of his power. Hence its less culpability.

2. Perjury violates a greater confidence. Men must trust one another; and the highest security for veracity is an oath. Now, as the greatest interests of society are necessarily connected with the greatest securities, the consequence of continued perjuries would be the loss or destruction of the greatest interests by the introduction of the greatest mischief. A simple lie cannot do the same injury, because the same credit is not given to it, except in the case of a Quaker, whose affirmation is held equal to the oath of another person,

[1] Rom. i. 9. 2 Cor. i. 23.

and to which the guilt of false swearing may attach, as to the oath of such other person.

3. God directed the Israelites to swear by his name; and to show the immutability of his own counsel, he confirmed his covenant with that people by an oath; neither of which he would surely have done, unless he wished oaths to be considered of higher obligation than a bare promise.

v. Promissory oaths are not binding, when the promise itself, without the oath, would not be binding.

vi. As oaths are intended for the security of the imposer, they must be interpreted and performed in the sense which the imposer intended; for, otherwise, they would be no security to him. Hence the meaning and reason of the rule, 'jurare in animum imponentis.'

CHAP. XVII. OATHS IN EVIDENCE.

The witness swears 'to speak the truth, the whole truth, and nothing but the truth.'

To conceal, designedly, a part of the truth, is as much a violation of the oath as to testify to a positive falsehood; for as there are two kinds of oaths relating to evidence, by one of which[1] the witness is required to answer truly to all questions asked, and by the other[2] 'to tell the whole truth;' it is evident that, as, in the latter case, there is no limitation relating to the question and answer, the law intended the witness to tell the whole truth, even though not asked to do so specially; and in this evasion of the intentions of the law, by which the confidence in the oath is destroyed, consists the culpability of an act as mischievous as perjury direct.

The only exception to this rule is, when the witness,

[1] Called technically *voir dire*.
[2] Used in examinations in *chief*.

by such full disclosure, would criminate himself; for, as the law compels no man to be his own accuser, the oath is imposed with this reservation. But such reservation extends only to cases where the law of the land permits such concealment of the truth. Hence, a delicacy with reference to the subject matter, or tenderness towards the person accused, are no pleas for concealment; for justice would thus be made to depend on the personal feelings of witnesses, to the injury of the public.

A full disclosure is also required from a person admitted to give evidence against his accomplices; because his immunity from punishment depends on the tacit engagement to tell the whole truth.

If answers be required to questions, respecting which the witness has doubts, as likely to affect himself or others, the court, which is competent to relax the whole obligation of an oath, may dispense with a part of it; and such authority will release the witness, but only in cases where he believes that such release is not at variance with the intention of the person imposing the oath.

CHAP. XVIII. OATHS OF ALLEGIANCE.

The present oath of allegiance, as settled at the Revolution, is, 'I do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King ———.' Formerly the oath was, 'I do promise to be true and faithful to the king and his heirs; and truth and faith to bear of life and limb and terrene honor; and not to know or hear of any ill or damage intended him, without defending him therefrom.' The present oath is thus a relaxation of the old one; and, as it was intended to ascertain rather the person to whom obedience is due, than the extent of such obedience, the law has purposely adopted a word of indeterminate import.

The nature of the oath will be best understood by considering what it excludes and what it permits.

The oath excludes all intention, at the time when it is taken, of the person so taking it, to support the pretensions of any *de jure* claimant for the crown, or to take any steps to depose the sovereign *de facto*, or to effect any change touching the person of the king, or form of his government, from motives of a merely private kind.

It permits resistance to the king, if, after taking the oath, his ill conduct or imbecillity should make a resistance to his power beneficial to the community; for that such latitude was intended by the Convention Parliament that imposed the oath, is evident from the fact, that as the very framers of it had, in the teeth of their own stricter oath of allegiance, resisted successfully their own sovereign's ill conduct, they neither did nor could mean to debar, by a less strict oath, their posterity from the right and benefit of similar resistance, if called forth by similar acts of ill conduct on the part of a king.

The oath does not require obedience to the king, unsupported by law; for fidelity is promised to him as opposed to his enemies; and allegiance can signify only an obedience to the will of the law, and not to that of the ruler. Hence, no submission is due, from the oath of allegiance, to a proclamation enjoining the subject to perform what the king is not empowered by the law to command.

The allegiance is due only to the king actually in power; for the promise is to obey the person and office of the king united; and when these two are separated, the allegiance is due to neither singly. Besides, since allegiance and protection are relative duties, as the king, deprived of power, gives no protection, so neither does the subject owe allegiance as a return for protection which he does not receive.

CHAP. XIX. OATH AGAINST BRIBERY IN THE ELECTION OF MEMBERS OF PARLIAMENT.

'I do swear, that I have not received or had, by myself, or any person whatsoever in trust for me, or for my use or benefit, directly or indirectly, any sum or sums of money, office, place, or employment, gift, or reward, or any promise or security, for any money, office, employment, or gift, in order to give my vote at an election.'

Although several contrivances to evade this oath may escape the legal penalties of perjury, still they all incur the moral guilt, as being not only within the interpretation of the law which imposes the oath, but even included in the words 'directly or indirectly' of the oath itself.

CHAP. XX. OATH AGAINST SIMONY.

From the supposed resemblance between the purchase of a benefice, and Simon Magus' attempt to buy the gift of the Holy Ghost,[1] the purchase by money of church preferment has been termed Simony.

As the sale of advowsons is, like the sale of landed property, the creature of law, the law alone must pronounce what is, and what is not, simony.

Now the law adjudges simony to consist in

1. All payments, contracts, or promises made by any person for a benefice already vacant.

In this case, as the law forbids a void turn to be transferred by sale from one patron to another, it restrains, of course, the patron actually possessing the presentation from being influenced in the choice of the presentee by any pecuniary motive, similar in effect to a sale.

2. A clergyman's purchase of the next turn of a

[1] Acts viii. 19.

benefice for himself, directly or indirectly, i. e. by himself, or by another with his money.

In this case, the law does not prohibit a clergyman from purchasing the perpetuity of a patronage, but only prevents the sale of such perpetuity, with the reservation that the seller may present himself to the first vacancy.

3. The attainment of a piece of preferment, by ceding to the patron any of its real or supposed rights. Here the simony of the purchase is coupled with the robbery of the succession.

4. Promises to the patron to remit part of the advantages of the benefice.

Here the simony is united to a robbery of the present, and probably of the future revenues of the church, by leading patrons to look out for the most needy incumbents, whose necessities will compel them to give up the greatest portion of such advantages.

5. General bonds of resignation, that is, bonds to resign on demand.

To meet the preceding cases, the law imposes on the presentee the following oath, which neither does, nor was intended to apply to all promises, as some have thought, but only against simoniacal contracts: 'I swear, that I have made no simoniacal payment, contract, or promise, directly or indirectly, by myself or by any other, to my knowlege or with my consent, to any person or persons whatsoever, for or concerning the procuring and obtaining of this ecclesiastical place, &c.; nor will I at any time hereafter perform or satisfy any such kind of payment, contract, or promise, made by another without my knowlege or consent.'

That this oath is binding on those who take it is plain; but the expediency of requiring it is questionable. It may be very fit to prevent, by the solemnity of an oath, a traffic in preferment by the highest officers

of the state, in whom the patronage has been invested, under the idea that they would pay some regard to the qualifications of the persons they promote; but the oath lays a snare for the integrity of the inferior clergy; and in cases of private patronage, no good arises to compensate for this danger.

Where advowsons are held in union with estates, it would be easy to forbid their future separation; and church preferment would thus be kept out of the hands of brokers.

CHAP. XXI. OATHS TO OBSERVE LOCAL STATUTES.

Members of ancient foundations are required to swear to the observance of the statutes; but as the literal observance is sometimes inconvenient, the question is, when may the observance be neglected on the ground of inconveniency, without a violation of the oath.

The juror's duty will be performed when he omits nothing, but what he believes the founder himself would have dispensed with. Hence the inconveniency must be—1. manifest; 2. it must be that which did not exist at the foundation; for if known then, and not excepted to, it is probable the founder purposely omitted to make the exception; and, 3. it must be at variance with the very object of the foundation. For instance, in certain colleges rules have been laid down by the founders on points of discipline and internal economy, suited to the then existing state of society; but which, if rigidly enforced now, would defeat the very purpose of the institution, by driving students from, instead of attracting them to it; and this inconveniency plainly warrants a relaxation of the terms of the oath.

CHAP. XXII. SUBSCRIPTION TO ARTICLES OF RELIGION.

Although subscription to articles of religion be not made on oath, yet, as it is a declaration of the subscriber's assent, equivalent to an oath, its interpretation must be regulated on the same principle, the intention of the imposer.

The inquiry then is, who imposed, and what was the intention.

As the bishop, who receives the subscription, is not the imposer, but is merely like the crier of a court, who swears the jury and witnesses, his private interpretation cannot affect the subscriber in the least.

Nor are the compilers of the Thirty-nine Articles the imposers; for they merely drew up, but did not enact, the articles.

The law, then, which did enact, is the imposer, whose intention the subscriber is bound to satisfy.

Now, to know the intention of a law, it is necessary to know the circumstances of the case which gave rise to it.

The circumstances of the case at the time of passing the law, was the existence of certain sects, Papists, Anabaptists, Puritans, and other dissenters, hostile to an episcopal church; and as it was to exclude such persons from the benefices of the church that the articles were framed, he who finds himself comprehended within such description of persons, cannot conscientiously subscribe to the articles. But as the law did not expect what is impossible, it could not intend the subscriber to express his belief of each and every article, subject to controversy; and, consequently, he may safely subscribe, who believes truly that he is satisfying the intention of the legislature.

In the present state of the Church, when pastors are appointed by private patronage to parishes, without due regard to local circumstances, some limitation

may be necessary to prevent the clashing of hostile sects. But this danger, if it exists, may be as effectually averted by converting the articles of faith into articles of peace.

CHAP. XXIII. WILLS.

The question is, Are wills a natural or adventitious right? or, in other words, Is the right to devise property founded on the law of nature or on the law of the land?

As a man's labor is his own property, so is the produce of his labor: such are the instruments by which he lives and makes life pleasant, and the animals he rears for use or amusement; and, as he may give such property away when alive, he may devise them when dead, because there is nothing to limit the continuance of the right, or to restrain its alienation.

But property in the soil is not, like the property of the produce of labor, personal; for the right to a spot of ground arises, in a state of nature, from the right to apply a part of what is common to all, to an individual's own wants and use; and as the wants and use cease at death, so does the right cease also; and the family of the first occupier, if they continue to want and use the spot, have the right of possession not from inheritance, but from such continued want and use.

Again, as the right to the produce of personal labor is founded on the law of nature, and as natural cannot, like adventitious rights, be limited by law, if the testator had a natural right to dispose of landed property for one moment after his death, he might direct the disposition of it for ever; which would be absurd.

The right, then, to will landed property is adventitious, or founded on the law of the land; and this inference is confirmed by the fact, that in most countries the power to make wills has been given only by the laws, of Solon, for instance, at Athens, and at

Rome by the twelve tables; and even in this country, the prohibition, which Tacitus says existed amongst the Germans against the devisal of land, existed from the Conquest till near the close of the reign of Henry VIII., when the prohibition was taken off by law.

But as the right to devise is derived from law, so is it limited by law; and the utmost limit of entails in England is during the lives in existence at the death of the testator, and for twenty-one years after their decease; and all attempts to evade the letter of this law are checked by the power of setting aside the will or its provisions, by means of various legal contrivances.

As wills are the creature of the law, so they have no power except from the law. Hence, if the will be informal, it is the same as if it had never been made; nor can the presumed intention of the testator be opposed to a specific rule of law.

For instance, if a man devise his freehold estate to his sister's son, and if the will be attested by only two instead of three witnesses, as required by the law, the heir at law is legally authorised to seize the estate, although aware of the testator's intention to cut him off; and the sister's son is morally bound to give up the estate, as soon as he finds this flaw in the will: for as the right to convey is clogged with certain conditions, if such conditions be not fulfilled, the right is virtually given up; and the heir at law is placed only in the situation, where he would be, if there were no will, or, what is the same thing, if the will be informal; and as the retention of the estate by the sister's son would be contrary to law, if the flaw were known to the legal heir, so is it against morality not to give it up, although the flaw be known only to the illegal possessor. Had wills been founded on natural rights, the decision in this case would have been just the re-

verse; for, then, the law would seem rather to refuse its assistance for the recovery of the property, than to deny the right itself of the devisee.

In the disposal of property, the regard due to kindred not lineal, arises from the presumed intention of the common ancestor, the founder of the fortune, to benefit his kindred in preference to strangers. This intention is presumed with greater certainty, in proportion to the nearness of the relation. Whoever, therefore, gives to strangers what he has received from kindred, is guilty not so much of unkindness to the parties not receiving, as of ingratitude to the party from whom the property came. This deference, however, to the supposed intentions of the ancestor will affect the subsequent distribution, according as such ancestor gained his property by personal exertion, or merely inherited it; for where a man has acquired property by his own exertions, and at the same time has refrained from exciting the expectations of relations, he is perfectly at liberty to dispose of his property, uninfluenced by consanguinity and affinity, which are merely forms of speech, imposing no moral obligation to do any particular act.

There is, however, one particular reason for providing for poor relations, that if we do not, none else will.

To neglect to make a will is a culpable omission, when it leaves all the younger children at the mercy of the eldest son; or where it distributes equally what ought to be distributed unequally with reference to the situations of the parties; or where it leaves an opening for litigation; or, chiefly, where it defrauds creditors; an evil, which the law of England gives rise to, by exonerating real estates from the payment of simple contract debts, although credit is, in fact, given to the possession of such estates. To neglect, therefore, to make provision by will for the payment of such debts, is to sin in the grave; and if

the neglect be the result of a design to cheat, the person dies with a fraud in his heart.

Formerly the personal property of those who died intestate was taken by the bishop, for the benefit of the dead man's soul, and applied to pious purposes. But as it was necessary for the bishop to know whether there was, or not, a will, before he either asserted or relinquished the claim of the church, an ecclesiastical court was established, which took cognisance of wills, and of disputes concerning the wills of persons dying within the diocese; a practice continued to the present day, and in which religion has no more to do than it has with any other matters merely legal.

As the right of succession is founded on law alone, so the claims of succession must be regulated by law alone.

These regulations ought to be guided by the supposed intentions of the deceased. The statute of distributions, which follows the Roman law, is sufficiently equitable: it assigns one-third to the widow, and two-thirds to the children; in case of no children, one-half to the widow, and the other half to the next of kin: where neither widow nor lineal descendants survive, the whole to the next of kin, and to be equally divided amongst kindred of equal degree, without distinction of whole or half blood.

The descent of real estates, that is of land or houses, is regulated by less equitable principles; for instance, an estate cannot go to the brother or sister of half blood, although it came to the deceased from a common parent; it must go to the most remote relation of an intestate, rather than to his own father or mother, or even be forfeited for want of heir, although both parents be living; and the most distant relation on the father's side must be preferred to the nearest on the mother's side, even though the estate was purchased by the intestate himself.

But as these absurdities may all be guarded against

by making a will, another reason presents itself for the non-omission of such a duty.

As land is not divisible like money, some difference might fairly be made in the law of descent; but there ought to be no difference, unless founded on reason. The Roman law made none, [because there was not the same motive as in modern times, to keep up the pride of family descent.]

RELATIVE DUTIES, WHICH ARE INDETERMINATE.

CHAP. I. CHARITY.

By charity is here intended, not bounty to the poor, nor, as St. Paul means, benevolence in general, but the promotion of the happiness of inferiors.

Charity, in this sense, is the result of virtuous habits; for while worldly interests regulate our behavior to superiors and equals, humanity alone can influence our conduct to those beneath us.

The happiness of inferiors may be promoted by, 1. the treatment of dependents; 2. professional assistance; 3. pecuniary bounty.

CHAP. II. ON TREATMENT OF DEPENDENTS.

A party pursuing a journey together find it for their interest that one should wait on the rest, a second seek out lodging, a third take charge of the horses and luggage, and a fourth bear the purse and regulate the route; not forgetting that they were equals at the commencement, and will be so at the end of the journey. In this case, he whose lot it is to direct the rest finds himself bound to study the feelings of his fellow-travellers, by giving his commands mildly, and using their service discreetly. [So in the journey of life,

they whom the Creator has made dependents ought to be treated with the consideration due to equals in the eye of God.]

Some, indeed, think that the obligation is rather from the inferior to the superior than contrariwise; but this is a mistake. The rich do not maintain the poor, but the poor the rich, whose food, house, dress, and luxuries, are all obtained from the industry of the poor. It is not the estate, but the labor employed on it, that pays the rent. The proprietor merely distributes what others produce.

Others, in extenuation of unkind conduct to inferiors, say, that kind usage is thrown away on persons of low estate: but all men, high or low, have and must have the same perception of the manner in which they are treated, though all may not exhibit such perceptions of gratitude, the same in kind or degree.

As we are bound not to diminish the sum of human happiness, we have no right to increase the labor of domestics and dependents by unnecessary occupations or ill treatment in deed or word, or by the refusal of harmless amusements.

CHAP. III. SLAVERY.

Servitude differs from slavery in this, that the servant contracts to work for his master, while the slave, is, without such contract, compelled to labor; but in both there is the same obligation, on the part of the master, not to diminish, beyond absolute necessity, the sum of human happiness.

Hence, as slavery may arise from, 1. crimes; 2. war; 3. debt; it must cease as soon as the crime is expiated, or the quarrel settled between the nations at war, or the creditor legally satisfied.

But as the slave-trade is not advocated on any of these principles, it is morally wrong.

Yet even if the purchase were defensible, the trade is still chargeable, 1. with the crime of exciting the

native slave-sellers to war and rapine for the purposes of trade; and, 2. with the cruel treatment shown to the slaves in their passage from Africa to America.

But although necessity, the name under which iniquity is ever attempted to be justified, has been pleaded for the continuance of the traffic, it has not been shown that the land could not be cultivated in the West Indies, as elsewhere, by free labor alone. It could not, perhaps, be cultivated so cheaply as regards either the grower or consumer of the produce; but this difference of cost is a question of convenience; not such necessity, as can alone justify an act otherwise immoral.

But it is said, that, although slavery existed in the very countries where Christianity was first promulgated, the Christian Scriptures do not prohibit it.

This is true; but it is unjust to infer from this silence, that Christ deemed all the then existing institutions right, or that he forbade the worse to be bettered.

Besides, Christianity purposely refrained from intermeddling with civil institutions, through the fear of impeding its progress, and perhaps endangering its existence, by giving a handle to the reproach of its exciting a servile war by preaching the doctrine of universal emancipation.

With regard to the West Indian slaves, their emancipation must be gradual, and accompanied with the diffusion of Christianity, under whose mild influence all parties will be prepared to see and correct the wickedness and folly of their present institutions; and then West Indian slavery will, like that of the Greeks and Romans, and subsequently of the feudal times, disappear, as knowlege and religion are gradually extended.

CHAP. IV. PROFESSIONAL ASSISTANCE.

This kind of charity can be exercised best by members of the legislature, and magistrates, or persons of the medical, legal, and clerical professions.

1. By members of the legislature, charity, in its most meritorious sense, (because its beneficial effects will be most widely diffused through the most extensive and least happy part of the community) may be exerted through their efforts to remedy the abuses and imperfections connected with the administration of law generally, and especially of such as relate to the poor, whom every government is bound to protect the more, as the rich can take care of themselves.

2. As magistrates, men of moderate means and education may place out the single talent entrusted to them with advantage, by interposing official authority and personal influence in behalf of the poor, who claim relief at the hands of those, who, from interested motives, are led to dole it out too sparingly, or even to deny it altogether.

3. By medical men, much good may be done at a little cost. Health, precious to all, is to the poor invaluable, and may be recovered by the timely application of drugs, which cost little, and of advice, which costs less, where the patient is unable to pay for them.

4. Much of the loss of money, time, and temper, produced by a law-suit, may be prevented amongst the poorer sort of litigants by men, who to a knowlege of law add the wish to reconcile differences impartially. Counsel also given seasonably will often keep or extricate the uninformed out of great difficulties.

Lastly, as clergymen, the greatest good may be effected by a judicious use of the means they possess of regulating the moral conduct of the poor, whose confidence they have it in their power to gain by the ready admission given to persons, whose disinterested motives even poverty cannot suspect.

CHAP. V. PECUNIARY BOUNTY.

Whether pity, or that feeling which prompts us to relieve misery, be an instinct or habit, is not material. It exists in fact; and was doubtless intended by the Creator to remedy those inequalities of condition,

which, as God foresaw, must follow every general rule for the distribution of property.

But independent of this presumed intention of the Creator, the poor have a claim for relief, founded on the law of nature; for as all things were originally common, none could have a greater right than another to a particular possession. Hence, when a partition did take place for the public good, it must have taken place on the condition, that every one should have a sufficiency, as intended by the Creator. But as no fixed laws can anticipate every case of distress that may arise, these cases were supposed to be left to the bounty of those, who had benefited by such previous partition; and, consequently, to deny the claims of such distress is to act morally wrong, by opposing the will of the Creator, who has filled the world with plenteousness for the support and comfort of his creatures.

On this duty the Christian Scriptures are more explicit than on almost any other. The forcible language of Christ, as applied to the good at the day of judgment, 'I was hungry, and ye gave me meat; thirsty, and ye gave me drink; a stranger, and ye took me in; naked, and ye clothed me,'[1] are too direct to leave us to doubt of the principles which will direct God's decisions, or of the value which he sets on such acts of bounty.

The apostles also inculcate the same doctrine, the diffusion of which has probably given rise to the numerous public charities founded in Christian countries, but not mentioned as existing elsewhere; and to which may be added the spirit of private liberality, and even the legal provision for the poor, the last not so much as thought of amongst the most humane nations of antiquity. So great indeed was the effect produced by the promulgation of Christianity on this very point, that many, believing in the doctrine of a community of

[1] Matth. xxv. 31.

goods, sold all they possessed, and gave the produce to the apostles to distribute amongst the poor.[1]

This conduct, however, of the primitive Christians is no precedent for our imitation: it might indeed be a strong proof of the sincerity of their faith; but though suited to a small, is quite impracticable in a large community.

On the other hand, the conduct of the apostles deserves our unqualified approbation, who, so far from taking advantage of such confidence to enrich themselves, were content to transfer the custody and distribution of the fund to deacons appointed by the converts themselves.[2]

With regard to the inculcating a habit of bounty, St. Paul well directs us to lay by at stated times such sums as we can spare, not from mere superfluities, but by acts of self-denial.

II. The manner of bestowing bounty.

In all questions respecting the manner, the sum is supposed to be the same, and the objects equally deserving.

There are three methods of bestowing bounty. 1. Where the giver knows of many objects for his bounty, it is better, because the good done is greater, that the sum be given to one or few persons in a lump, rather than doled out in driblets to many. By the first plan a permanent good may be effected; by the other only a temporary evil can be avoided. Hence, a pension or annuity, paid regularly, will produce greater happiness than the same sum given piecemeal, or paid irregularly, by preventing not so much actual want, as, what is scarcely less painful, the dread of it.

2. Where the giver does not himself know of proper objects, the next best plan is to bestow the money on some public charity, where it will diffuse more

[1] Acts iv. 32. [2] Acts vi. 2.

extensive benefit than it can do by its private application. For instance, a guinea given to an infirmary will there obtain all that is requisite for the patient; but scarcely any thing, if given to the patient himself.

3. The last and lowest exertion of benevolence is relief to beggars. But though indiscriminate charity of this kind is not a virtue, the indiscriminate rejection of beggars is morally wrong; not so much from the act itself, as from the tendency it has to produce indifference to distress; as some may thus perish, to whom had we lent a patient ear, the tale of their real sufferings would have met with the relief required, not to be obtained from any other source.

There are other kinds of pecuniary charity, where much good may be done at a little cost, as in the case of scarcity or severity of seasons, by the sale of articles of necessity at a price within the reach of the poor, and by other expedients, to meet temporary difficulties, which the occasions themselves will suggest. Again, the proprietors of estates may greatly increase the happiness of the poor, entrusted by Providence to their care, by employing them in various occupations, especially those connected with the cultivation or improvement of the soil; of which undertakings if the profits be none, or less than none, the proprietors may fairly put the difference to the account of charity; and if the loss can be spared, the consideration that the public has been benefited is sufficient to satisfy a man of benevolent intentions.

A question has been started, whether works of charity ought to be done secretly or not. It is true, secrecy has been enjoined by Christ;[1] but the secrecy there intended is opposed to ostentation, and the injunction has reference rather to the motive than to the manner of the act. Charity, to be meritorious, must spring from a desire to please God, and not to gain the

[1] Matt. vi. 3.

applause of men. Hence, if the motive be not ostentation, the act not only may, but ought to be public, where by such publicity the ends of the charitable object are more successfully attained; and this doctrine is supported by the exhortation to let our good works shine before men for the glory of our Father in heaven.[1]

Since, then, the propriety of secrecy or publicity depends on the motive, the former must be adopted, when we cannot produce a good effect by our example; the latter, when we can.

III. The pretences by which men excuse themselves from acts of bounty.

1. That they have nothing to spare. But this will hold good only, if, after every effort of self-denial has been made, there remains barely enough for their necessities.

2. That by charity is not meant pecuniary bounty. This is refuted by the language of St. James, ii. 15. 'If a brother or sister be naked and destitute of daily food, and ye say, Depart in peace; be ye warmed and filled; yet give not the things needful to the body, what doth it profit?'

3. That in St. Paul's definition of charity,[2] almsgiving is not included. But the charity there intended is general benevolence.

4. That they pay for the support of the poor. But to such support the poor have the same right as the party has to the remainder of his property: hence, such payment is no bounty.

5. That they employ many poor persons. If such employment be given only for the benefit of the poor, and not themselves, the plea is good; otherwise, not.

6. That as the poor have less acute feelings than the rich, they suffer less from the state of habitual poverty. Habit cannot destroy the sense of the pain

[1] Matt. v. 16. [2] 1 Cor. xiii.

of hunger and cold; but if it could, the question is not how much a man can endure, if we neglect our duty; but how little he would, if we did not.

7. That the poor are ungrateful. This is not true; and if it were, the duty is independent of their thanks.

8. That impositions are practised by the poor. If due inquiry be made, our merit is the same: the deception may be in the representation, but the distress will be probably real.

9. That the poor should apply to their parish. This is not always practicable; or if possible, parish relief may not meet the nature of the case.

10. That alms-giving encourages idleness. Not if judiciously done.

11. That to relieve small wants takes away the power to attend to greater claims. This plea is good, if such greater claims be in fact attended to.

Beside all these excuses, pride or prudery, or delicacy, or love of ease, prevent one half of the world from knowing what the other half suffer.

CHAP. VI. RESENTMENT.

Resentment is either passive anger or active revenge, or both together; by the former is meant the pain felt on the receipt of an injury; by the latter, the desire to inflict on the offender a pain greater than the injury received. Although we cannot quell, we may still modify the principle of anger, but it is our duty to suspend the effect of revenge altogether.

CHAP. VII. ANGER.

Anger is sinful, when conceived on slight grounds, or when long continued.

1. 'Charity suffereth long, and is not easily provoked.' The Christian's duty is thus plainly marked out, not to take offence on slight grounds.

2. ‘ Let not the sun go down on thy wrath.’ This precept is equally plain and positive as to our anger being short-lived.

But as these precepts presume that the feeling of anger is in our power, which as a passive feeling it is not, they must be understood as enjoining us to allay the irritable impressions produced by the receipt of an injury.

Such sedatives of anger are furnished partly by philosophy and partly by religion. The former suggests reflections on the inutility of anger, with reference to the act done, and the folly of dwelling on injuries, painful only in the recollection; the latter suggests the fear, that if our offences before heaven are to excite the same feelings of God's anger not to be appeased, as we show to the offences of our fellow creatures, our hopes of happiness will be slight indeed: while both conspire in teaching us to put the most favorable construction on the motives of others and the least stress on our own feelings, by an endeavor to ascertain what would have been the conduct of both parties had they changed places, and whether he, who seems to have done the wrong, but repented of it, be not in reality less to blame, than he, who having received the injury, will not forgive it; and whether, if there be just grounds for the anger at its commencement, there can be any to warrant its continuance.

CHAP. VIII. REVENGE.

Revenge is the desire to inflict on the offender a pain greater than justice demands.

There is no difficulty in knowing when we inflict pain, and still less, when we do so through revenge: for if punishment alone be the object, we proceed with reluctance; if revenge, with pleasure.

It is probable from the light of nature that a passion, whose object is to give pain, is disagreeable to the will of the Creator. Other passions may produce

pain by accident, this does so by design. [But as the Creator has willed nothing to produce pain designedly, the passion of revenge is probably disagreeable to his will.] This probability becomes a certainty, if we credit the Christian Scriptures, where forgiveness, the opposite to revenge, is specially enjoined.

By comparing the language used in the passages quoted below,[1] it will be seen that, while revenge is forbidden in any shape, we are required to do good to our very enemies. But the injunctions in favor of forgiveness do not interfere with the prosecution of public offences. From the language of Christ, 'If thy brother, who has trespassed against thee, neglect to hear the church, let him be unto thee as an heathen man and a publican,'[2] it is plain that he acknowleges the discipline established in religious societies, at least, and that their power to punish or restrain ought to be upheld.

Hence, if the magistrate be permitted to punish, so is likewise the prosecutor; for in this case the one cannot exist without the other.

Nor, by parity of reason, are private persons prohibited from the correction of vice, provided they are provoked by the injury done to others, and uninfluenced by any feelings of a private pique towards the offenders.

Thus, it is no breach of Christian charity to withdraw ourselves from persons, with a view to discountenance conduct we deem immoral.

Hence, the league amongst women of character to exclude kept mistresses from their society, is consonant to Christian charity, from its tendency to check such a state of concubinage, hurtful to society, and forbidden by the law of God.

[1] Matth. vi. 14. xviii. 34. Rom. xii. 19. Col. iii. 12. 1 Thess. v. 14.

[2] Matth. xviii. 17.

Although we are forbidden to resent an injury, we are not required to expose ourselves to a repetition of it; for this would be to encourage the acts of the offender to his own ruin.

Where a benefit is to be conferred, and the charge given us to confer it on the most deserving, the choice must be made, without reference to the person so chosen being a friend or foe: but if only a proper object, and not the most deserving, be required, then we are not bound to prefer a foe to a friend.

Christ, who estimated virtues by their utility, lays the greatest stress on the virtue of forgiveness, conscious that the private feuds which disturb the intercourse of life, and make up half its misery, owe their origin to the want of a forgiving temper.

CHAP. IX. DUELLING.

Duelling as a punishment is absurd; for it is an equal chance whether the punishment fall on the person offending or offended. Nor is it much better as a reparation, for it neither atones for the past fault, nor prevents (unless one or both of the parties fall) its repetition in future.

It neither is, nor is considered to be, either a punishment or reparation; but as the law of honor calls the man a coward, who submits patiently to affront, the duel takes place to satisfy, not the parties, but this dictum of the law.

The unreasonableness of the rule is one thing; the duty of the parties, while such a rule exists, is another.

Are, then, the parties bound by this law to take away each other's lives? No. For,

1. Murder is forbidden; and life, deliberately taken away, except by public authority, is murder. The value and security of life make this rule necessary; for any other would admit all the mischiefs arising from blood-shedding by private hands.

2. If divine laws are to be thus abrogated by human laws, all morality, founded on the divine will, is at end, and fashion may annul every moral obligation in turn.

But the sense of shame is insupportable. So is that of hunger. If, then, the former can extenuate murder, so can the latter: yet this finds no advocates, nor should the other.

Take away the chance of falling himself, and the duellist becomes the assassin; add it, and the difference is only that fewer will adopt the practice. A highwayman, who knows that the party whom he intends to rob is armed like himself, is as brave as the duellist; yet his boldness affects not his criminality; it merely represses imitation.

In expostulating with the duellist, it is supposed that his adversary fall, which is a fair supposition; for if he has no right to kill, he has none to make the attempt. On the other hand, he is not urged on the Christian ground of a forgiveness of injuries; for on this point he may be guiltless, and be acting only with a wish to save his honor.

In this view of the question, the difference between the parties is none; for both are influenced by the same law of honor, and both run the danger of committing murder.

But as public opinion is not easily controlled by civil institutions, the custom will continue, till some plan be found, if ever found, to take away the reproach of cowardice attached to patience under insult, and to a refusal to fight.

The insufficiency of the law of the land to meet cases now settled by the law of honor, causes many to seek redress, attended even with the chance of death, in preference to the ridicule thrown on the sufferer by seeking compensation in a court of law.

For the army or navy, where the law of honor is ri-

gorously enforced, a court of honor might be established, with power to award such submissions on the part of the offender, as a duel is intended to obtain; and to this court, others, not of those professions, might, if fashion so willed it, resort.

Duelling, as the law at present stands, can seldom be punished; for as all the circumstances, which would indicate the malice prepense of murder, are suppressed, and merely the fact of the rencontre told, the act is deemed manslaughter, a term applied by the law to death which takes place during actual fighting.

CHAP. X. LITIGATION.

'If it be possible, live peaceably with all men.'[1] Whence it appears, that it is not always possible to do so. But it will be said, that Christ has enjoined us, 'If an enemy strike the right cheek, to turn the other to him also.'[2] But this is rather a proverbial description, than a positive rule, of patience, as may be inferred from the conduct of Christ himself, who, when struck by a police-officer, thus rebukes the offender, 'If I have spoken evil, bear witness of the evil; but if not, why smitest thou me?'[3]

A rule, which forbade all opposition to injury, would have the tendency to give a licence to insult, and thus, interfering with the happiness of man, cannot be right. Hence, St. Paul, who strongly felt and inculcated the necessity of forbearance in small injuries, never requires an unresisting submission to every injury; and the same apostle, who reproved the litigiousness of the Corinthian converts,[4] took refuge in the laws of his country, and claimed the privileges of a Roman citizen, against the violence of the Jews,[5] and the injustice of the chief captain.[6]

But if the injury personal or public be small, or the

[1] Rom. xii. 18. [2] Matth. v. 39. [3] John xviii. 23.
[4] 1 Cor. vi. 7. et seq. [5] Acts xxv. 11. [6] Acts xxii. 25.

punishment likely to be disproportioned to the offence, the Christian is bound not to go to law.

On the other hand, a law-suit may be instituted on occasions of importance, 1. to decide an uncertain right; 2. to obtain reparation, not otherwise attainable; and, 3. to prevent the repetition of the injury.

Hence, as justice is the sole object, the means must be morally correct, and a process the most simple and direct be adopted, either by a reference to arbitration, or an agreement to settle the dispute by mutual concessions; nor can either party morally have recourse to law, unless they think their case be founded on right, and not dependent on the uncertainty of the decision; nor must they take any steps to prevent or pervert evidence likely to make against themselves.

In criminal prosecutions, as the individual is injured only accidentally, while society suffers designedly, all private considerations, against or for the offender, must be lost sight of; and, consequently, as the sufferer must take no steps to increase the chance of punishment, with a view to gratify private feelings, so neither must he procure, directly or indirectly, the escape of the offender, unless he believes that the tendency of such prosecutions is to destroy what the law intends to preserve, the happiness of society.

In offences against the morals of society, and where no individual injury has taken, but only may take place, the prosecution obligatory on all collectively is not binding on the individual; who may, however, become the prosecutor, if he so act on the ground of public good, and not to gratify some private pique merely.

Hence, an informer is a meritorious character, so long as he directs his activity to the compulsory observance of laws of general utility, uninfluenced by the pecuniary reward of such activity; but when he takes advantage of enactments disregarded, because useless or obsolete, he acts morally wrong, by mis-

applying, wilfully, a rule to a case which the law did not intend to embrace.

CHAP. XI. GRATITUDE.

The mischief of ingratitude consists in its tendency to check acts of benevolence: nor is the mischief small; for much of the happiness of society depends on such acts, of which laws cannot compel the performance, and for which morality can suggest only faint motives.

Another reason for cultivating a grateful temper towards man, is in its tendency to produce a similar feeling towards God.

This duty is not, as sometimes supposed, omitted in the Christian Scriptures; for the precept, 'to love God because he first loved us,' while it acknowleges the existence of the principle of gratitude, directs it also to its highest object.

As there are no limits to the feelings of gratitude, so there can be none for the ways of expressing it.

We are not, however, bound by a principle of gratitude to do an act morally wrong, because the prohibition of such act is greater than, and antecedent to, the claim of gratitude; but to plead a conscientious scruple for non-performance, when such does not really exist, is to add hypocrisy to ingratitude, and to bring on honest non-compliance the suspicion of being a dishonest one.

To upbraid a man with the favors he has received, is ungenerous; but infinitely more so to require of him mean and dishonest compliances, in return for such favors.

CHAP. XII. SLANDER.

Speaking is really acting, but under another name. Deeds are decided according to their intentions, and so must words. The mischief is the same, though the means may differ. Hence, Christ declares, 'by words

thou shalt be justified, and by words condemned;'[1] that is, by words, as well as deeds; for both are equally capable of producing good and evil.

Slander is either malicious or inconsiderate.

Malicious slander is the relation of either truth or falsehood, with a view to do evil.

Slander generally means the promulgation of a malicious falsehood; but if truth be told with a malicious view, it is also slander, though its guilt is less than if united with falsehood.

By slander ought to be meant the production of gratuitous mischief; for if any feelings of self-interest interfere, to be attained by a falsehood, it is a fraud; if by truth, unless accompanied with some immoral act, such as breach of promise or betrayal of confidence, it is not criminal.

Whether a person be affected, directly, by the scandal, or indirectly, through another connected with him, the guilt must be measured by the misery intended to be produced; and the disguises, under which slander is concealed, are only so many aggravations, as they indicate more clearly the design of the slanderer.

Inconsiderate slander is less criminal, although it may actually produce the same mischief as malicious slander: but though less criminal, it is not free from guilt; nor can the plea of the want of a design to injure exonerate the offender, who is bound to keep such a check on his words as to prevent even indirect mischief to others.

Information given for the sole purpose of caution is not slander.

On the other hand, indiscriminate praise, the opposite to slander, though apparently the excess of candor, proceeds either from a frivolous understanding, or a contempt for all moral distinctions.

[1] Matth. xii. 37.

RELATIVE DUTIES, WHICH RESULT FROM THE CONSTITUTION OF THE SEXES.

The constitution of the sexes is the foundation of marriage.

Collateral to the subject of marriage, are fornication, seduction, adultery, incest, polygamy, and divorce.

Consequential to marriage, is the relation and reciprocal duty of parent and child.

CHAP. I. USE OF MARRIAGE INSTITUTIONS.

Marriage is useful as promoting beneficially—

1. The private comforts of individuals, and the female sex especially.

All, perhaps, are not interested in this reason; but as whatever adds to the happiness of the majority is binding on the whole, all are bound to abstain from conduct productive of the unhappiness of such majority, the result of obstructions to marriage.

2. The birth, education, and provision of the greatest number of healthy children.

3. The peace of society, by preventing the contention that would otherwise ensue amongst men for the possession of one woman, unless the right of exclusive possession were given to one man.

4. The improvement of society, by the formation of separate families under one head, possessed of more influence than all civil authority united.

5. The additional security of the state, founded in the feelings of persons anxious for the welfare of their children, and confined to fixed habitations.

6. The encouragement of industry.

Some ancient nations were more sensible than the moderns are of the utility of marriage. Hence, the

Spartans checked celibacy by penalties, and the Romans by the privileges enjoyed by persons with three legitimate children. A man with no child could, by the Roman law, claim only the half of a bequest.

CHAP. II. FORNICATION.

The mischief, and consequently the guilt, of fornication consists in its tendency to check the benefits of marriage.

Now, promiscuous intercourse has such a tendency, by affording facilities to the gratification of passion, unfettered by the restraints of matrimony. But as these passions are the most universal, and strongest in nature, the restraints even of marriage would be borne, if the gratification could not be attained otherwise.

But the libertine may perhaps say, that as he is deterred from marriage by other considerations, his fornication cannot affect himself, nor can his example influence others. But if the practice were universal (and if allowable in one it is so in all), as it would produce the misery of the majority, it is immoral in its general tendency; and of such general immorality, the individual case must take its proportionate share.

Fornication supposes previous prostitution; of which if misery be the result, (and that it is, requires no proof beyond its self-evidence) every act of fornication, as it is the support of prostitution, so is it responsible for so much of the general misery resulting from such prostitution.

From whatever cause it may arise, the fact is, that promiscuous intercourse tends to deprave the mind, and to break down the barrier between virtue and vice. Such indulgences are in low life usually the first steps to crimes of a deeper dye, and in high life to a profligate contempt for all religious and moral obligations: and habits are thus formed productive of misery to the individuals and society at large.

Fornication also perpetuates a disease, pernicious to the patient and to his offspring through even distant generations.

A passion so strong and natural as that of sexual intercourse was doubtless intended to be gratified, but, like other wants, not without moral restrictions.

The Christian Scriptures condemn fornication peremptorily; and the words of Christ, 'Out of the heart proceed evil thoughts, adulteries, and fornication; these things defile a man,' are too explicit to require comment, and are well supported by the expression in the epistle to the Hebrews, 'Marriage and the bed undefiled is honorable amongst all men; but whoremongers and adulterers God will judge;'[1]—a decision the more remarkable, as at that time even moralists had not decided that fornication was a crime.

The Scriptures impose neither celibacy on the clergy, nor on women perpetual virginity. By inculcating the holiness of the marriage bed, they have shown how, and to what extent, such passions can and may be gratified.

The custom, in some countries, of considering fornication as a source of revenue by licensing brothels, must, by its discouragement of marriage, produce evils greater than those, the dread of which has been the cause assigned for such toleration. Even if prostitution were abolished, (and all that law and religion united can do is only to check it partially) it is not certain that other crimes would ensue to the neglect of marriage; especially, as we know that where men have no such facilities, they are the most virtuous, as women are the most chaste.

There is, however, a state of concubinage similar to marriage, and wanting only the ceremony, which, defended on grounds different from those advanced in support of fornication, must be examined separately.

[1] Heb. xiii. 4.

It has been said that marriage is a civil ceremony, scarcely anywhere the same, and is nowhere prescribed in Scripture as necessary to be performed; and that, consequently, if a man and woman cohabit with the engagements of marriage, they may dispense with the rite, which, indifferent in the eye of God, cannot affect morality either way.

To this it may be replied,

1. If the two states be in all other respects similar, why not marry? But the two states are not and cannot be the same to the children, exposed to the pains and penalties of illegitimacy.

2. If either party be at liberty to separate, though neither be affected individually by such separation, the children, if they have any, must be affected, [by losing the support of one parent instead of enjoying the support of both.]

3. Although the rite be a form, and a variable one, this variety makes no difference in the obligations of the parties; for the same variety is found in the legal acts of different countries, all of which are in their own state equally binding.[1]

Lastly, with respect to the omission of any prescribed rite, the Scriptures, content to prohibit positively cohabitation without marriage, leave the law to settle what is or is not a marriage; just as they forbid the violent abstraction of another's property, leaving the law to say what is or is not property.

But independent of Scripture injunctions, such cohabitation is immoral, because it is pernicious to society. Hence, if the law ordains a particular ceremony

[1] The above seems to be Paley's meaning; his words are, 'As to the marriage rite being a mere form, and that also variable, the same may be said of signing and sealing of bonds, wills, deeds of conveyance, and the like, which yet make a great difference in the rights and obligations of the parties concerned in them.'

to be performed for the good of society, which without such ceremony could not be accomplished, (and in the present case, a promise to cohabit like married persons during the life of either party could not be made irrevocable except by such ceremony) it is immoral for persons to cohabit without the intervention of such forms.

If fornication be criminal, whatever tends even indirectly to the commission of the crime, is also criminal; hence, lascivious conversation or obscene pictures and writings, and the circulation of such, is also criminal, and are acts, than which none produce greater mischief, or have less to plead in their excuse.

The voluntary admission of impure thoughts falls within the condemnation expressed in the language of Christ, 'Whoso looketh on a woman to lust after her, hath committed adultery already with her in his heart;'[1] where the command to regulate the thoughts strikes at the very root of the evil.

CHAP. III. SEDUCTION.

The seducer of a woman's honor and the swindler of a man's property are in act and design similar; yet, if both are equally successful, the law of honor reprobates the latter, and applauds the former. So much for the consistency of its code!

Seduction is seldom effected without fraud, so much the more criminal, as it produces greater mischief, and admits of less reparation.

The injury is threefold, to the woman, her family, and the public.

The injury to the woman is in her painful sense of shame, in the loss of reputation, and in the destruction of her moral principles.

1. The sense of shame must be acutely painful, as

[1] Matth. v. 28.

it operates sometimes to destroy even the natural affection of a mother for her child. It is true, that all neither have children, nor, if they have, does such destruction take place. But this only shows the intensity of the feeling of shame in those who do suffer, and the barbarity of those who cause such sufferings.

2. The loss of reputation almost exceeds computation, especially to those who look, as most do, to their reception amongst equals for a considerable portion of their happiness. Besides, by such an event a woman loses the chance of marriage; a state which, however indifferent to man, is of absorbing interest to a woman: or, if she lose nothing on this head, as the loss of reputation may interfere with her means of maintenance, her very existence may thus be brought to depend on prostitution alone.

3. As a woman collects her virtue into this one point, the loss of chastity is generally the loss of her moral principle, even if the intercourse be not discovered.

II. The injury to the family may be best estimated by the application of the rule, 'to do as you would be done by.' What parent or brother would not consider a child or sister's seduction a greater loss than that of property by force or fraud? and yet the law protects property even by the forfeiture of the offender's life; while, in the case of seduction, the brother has no remedy at all, and the father only such pecuniary damages, as he can prove to have suffered from the loss of his daughter's services during her pregnancy and nurturing.

III. The public loses by the ulterior consequences of an immoral act, and from the supply thus kept up of prostitutes.

Since, then, the immorality of an act depends on its tendency, if generally adopted, to diminish the sum of human happiness, it may be truly said that few crimes can equal seduction in enormity, even of those visited with death.

CHAP. IV. ADULTERY.

In adultery there is all the criminality of seduction, with the addition of injury to the husband, and of cruelty to the children, if any, who are frequently involved in the conduct of the guilty parent.

But it may be said, that if the adultery be not discovered, no injury is done. To this it is replied, that secrecy cannot be ensured; or if it could, that, as the only security would then be in the want of opportunity, the fear of such opportunity would lead to a want of confidence, and thus tend to destroy the happiness of the married state.

But independent of such remote tendencies, the immorality is direct, in the violation of the marriage vow, where one party is guilty of perjury, and the other of a subornation of perjury.

Next to, and connected with, the actual crime of adultery, is the endeavor to alienate the affections of married persons.

The only apology given for adultery is the prior transgression of the other party. But this is no real justification. The marriage vow neither does nor is supposed to depend on reciprocal fidelity. Besides, such a plea would have a tendency rather to multiply the offence than to repress it, or reclaim the offender.

Adultery is interdicted in the Decalogue, but not fornication. Hence, God intended to draw a distinction between the two; and hence the justice of the severity of punishment inflicted by the Jewish law on adulterers, both of whom, male and female, were to be

put to death.[1] A similar distinction is shown in the Christian Scriptures, where both crimes are mentioned separately,[2] and adultery deemed the greater of the two.

From the language used by Christ in the history of the woman taken in adultery, 'Neither do I condemn thee,' it has been inferred, that he thought adultery not criminal, or, at least, not so criminal as we do. But Christ gave no opinion on the subject either way: all he did say was, that in the absence of others to accuse the woman by process of law, he would not undertake to condemn her judicially; and by so doing he merely evaded the snare laid to entrap him into an officious interference with the functions of the Roman governor. But when he adds, 'Go, and sin no more,' he in effect tells her she had sinned, although he is silent as to the degree of guilt in the crime committed.

Adultery, punished in England with death during the time of Cromwell, is now punished, as a civil injury, with pecuniary damages alone.

CHAP. V. INCEST.

To preserve the chastity of females brought up under the same roof with the males of a family, it is necessary to prohibit all sexual intercourse between near relations. But as this restriction is founded on necessity alone, where such a reason does not exist, the intermarriage of distant relations, if prohibited by law, must be justified by its tendency to promote general good.

The Levitical law adopted in England, and from which the Roman differs but little,[3] prohibits mar-

[1] Levit. xx. 10. [2] Matth. xv. 19. 1 Cor. vi. 9. Gal. v. 9. Heb. xiii. 4.

[3] The Roman law continued the prohibition to the descendants of brothers and sisters without limits. In the Levitical and English law, there is nothing to hinder a man from marrying his great niece.

riage between relations within three degrees of kindred, computing the generations not from but through the common ancestor, and accounting relation by marriage the same as by blood. The children of such marriages are not, however, illegitimate, unless the parents be divorced.

The Egyptians permitted the marriage of brothers and sisters; but amongst the Athenians and Chaldeans, although brothers and sisters of half-blood, on the father's side, could, those on the mother's could not, marry. In the former of such relation to each other stood Abraham and Sarah.[1]

CHAP. VI. POLYGAMY.

The equality[2] in the births of males and females intimates God's intention to assign one woman to each man; for if one man possesses exclusively many women, many men must be deprived of their right to a partner. Besides, had God intended polygamy, he would, probably, have given Adam more than one wife, especially as by such arrangement the increase would have been quicker and greater.

Polygamy, thus at variance with nature's law and God's apparent design, produces effects injurious to society, by giving birth to contests amongst the different wives of one husband, whose affections are thus distracted or lost.

Besides, where polygamy prevails, men become weak in body and depraved in mind; wives are considered the mere instruments of physical pleasure; and not only is there a neglect of the children born, but the number of births is considerably diminished; because,

[1] Genesis xx. 12.

[2] This equality is not exact. The number of male infants exceeds that of females in the proportion of nineteen to eighteen, or thereabouts; which excess provides for the greater consumption of males by war, seafaring, and other dangerous or unhealthy occupations.

though one man can have more children by many wives, yet the same number of wives can have more children by a greater number of husbands; and with regard to the maintenance of the children, it is plain that the same number of children can be better supported by the united exertions of many fathers, than by those of one alone.

Whether polygamy is permitted by the Mosaic law is doubtful.[1] But, permitted or not, it was practised by the patriarchs both before that law and under it. The permission then, if given, was probably given as an indulgence to prejudices, and not because it was morally correct.

As polygamy was forbidden by the Greek and Roman laws, it is probable, that it was tolerated merely in the eastern colonies, and scarcely known elsewhere. Hence, its omission in the Christian code, promulgated in countries more immediately influenced by Roman customs; although the words of Christ, 'Whoever putteth away his wife except it be for fornication, and marrieth another, committeth adultery,'[2] may be said to prohibit polygamy by implication. For as the guilt lies in marrying one without putting away the other, polygamy, where one wife is so taken without such previous repudiation of another, becomes, like adultery, criminal. Hence too St. Paul, when speaking of marriage, always supposes it to signify the union of one man and woman.

In nothing do countries differ so much as in their domestic arrangements. Polygamy, almost universal in the East, is prohibited in all Christian countries. In Sweden it is visited with death. In England the punishment is less severe; but as it renders void the second marriage, it is a cruel fraud, especially if practised on a woman, thus cheated out of her chastity and happiness together.

[1] Deut. xvii. 17. xxi. 15. [2] Matth. xix. 9.

The ancient Medes compelled a man to take seven wives, and a woman five husbands, according as war or other causes had thinned the male or female population respectively.

CHAP. VII. DIVORCE.

By divorce is meant the dissolution of marriage at the will of either party.

The power of divorce was given by law to the husband, amongst the Jews, Greeks, and Romans; and is still exercised by the Turks and Persians; [and, under certain limitations, by the wife also, in England, and elsewhere.] Now, does the law of nature admit such a right?

As the duties which, by the law of nature, parents and children owe reciprocally to each other, cannot be fulfilled, except by the continued cohabitation of the parents, divorce, at variance with such obligations, is at variance also with the law of nature.

But if there be no children, the objections to divorce rest on grounds of general expediency alone; for,

1. Divorce is not necessarily excluded by a marriage contract; for the contract may be so worded as to permit such separation.

2. Although a contract may continue naturally as long as the purpose for which it was made continues, still, if there be no children, for whose benefit alone the contract is made, there can be nothing to prevent a divorce.

3. Nor can it be said that a contract for marriage is indissoluble, unless the parties can be placed in the same situation as they were previous to the contract; for this law, if applicable to divorce, must be so to all other contracts,—a proposition requiring a proof not yet given.

On the other hand, as a marriage contract would, like other mutual engagements, be dissoluble at the

option of the parties, the obligation to its forced continuance must be sought for elsewhere; and if it appears that it is supported on the grounds of general expediency, it agrees with the law of nature, and must, like other duties, be fulfilled.

Now the general utility of making the marriage contract indissoluble during the life of either party may be proved from its tendency to preserve the happiness of the married state, through the advantage of a common interest; for if a separation could take place at will, the wife, as the party likely to suffer most from such separation, would, by attending to her own interest, endeavor to guard against the evils of such anticipated divorce. Hence, a disunion of interests would be followed by an alienation of affection, detrimental to both parties: but if she be secured from the chance of a capricious separation, the same self-interest, which would lead, in the former case, to acts productive of misery to both, will lead her to an opposite line of conduct, productive of mutual happiness. Besides, as, by the constitution of nature, love is not a durable passion, whatever charms either party may once have seen in the other, will be impaired by possession; and, as the desire of novelty can be checked only by the known impossibility of obtaining the object, if by such a check motives of action are introduced, tending to supply, by a sense of mutual interest, what satiety has impaired of passion, it should, for its utility, be adopted.

Were the motives which bring the sexes together able to hold them together, or could the woman, after a separation, be restored entirely to her former state, the power of divorce, if granted, would not be used, or could not be abused. But as, in the present constitution of society, the disadvantage must be generally on the woman's side, justice demands that some check be interposed, to prevent one half of married persons being made miserable by the caprice of the other.

But it may be said, that divorces by mutual consent would not be exposed to the same evils; but, if the consent of one party be denied, how is the divorce to take place? and, if it does not take place, how can misery fail to be the result?

The law of nature (or of the land, rather) admits a divorce as a remedy for substantive, i. e. provable acts, such as adultery, desertion, personal ill-treatment, attempts at life, madness, or impotence; but not as a relief from imaginary grievances, such as dislike, temper, jealousy, and other sources of annoyance, which, though asserted by one party, cannot be disproved by the other; and the admission of which, as a plea for divorce, would destroy at once the marriage contract.

This consideration of the extent of the mischief resulting from a latitude in the power to divorce, is the best answer to persons who, like Milton, advocate the right to dissolve a marriage on the ground of mutual dislike; for, if it be said that the happiness of both would be best consulted by the dissolution of a connexion disagreeable to both, it may be replied, that as the extension of the rule would produce more misery than its limitation can, the general consequence must not be sacrificed to the benefit of the individual exception.

Although the Mosaic law permitted a Jew to put away his wife for slight causes, Christ has prohibited all divorces, except on the ground of adultery; a rule which, given in explicit words, must be taken in its plain sense.

With regard to any separation short of divorce, neither law nor reason forbid it; for if there be no children to require the care of both parents, the parties are left to seek their own happiness by any act not immoral; where the promise 'to keep together' (i. e. to live together) is both given and received with the knowlege that a case of separation, or even of di-

vorce, may occur, through the operation of the very law that imposed the oath. St. Paul, likewise, who, while he permits a wife to depart from her husband,[1] orders her also to remain unmarried, thus distinguishes between a separation and divorce.

In England a divorce is permitted on the ground of adultery alone; nor is even that relief granted until complete investigation has taken place before one or more tribunals, to show that no collusion existed between the parties.

It was once proposed to prevent by law the offending parties from intermarrying, under the idea that adultery is facilitated by the prospect of such subsequent marriage, and that without such prohibition the present plan of divorce holds out rather a premium than punishment for crime. The law was however not passed, though the proposal was worth an experiment: at all events, something[2] more penal is required to check the progress of depravity so alarming.

The sentences of ecclesiastical courts, which release parties from the marriage contract on the ground of some legal defect, are not dissolutions of an existing marriage, but simply declarations that there was in

[1] 1 Cor. vii. 10. 11.

[2] This 'something' which Paley proposes in the text, is here given as a note:—

'Might not a law be framed, directing the fortune of the adulteress to descend as in case of her natural death; reserving, however, a certain proportion of the produce of it, by way of annuity, for her subsistence (such annuity, in no case, to exceed a fixed sum), and also so far suspending the estate in the hands of the heir as to preserve the inheritance to any children she might bear to a second marriage, in case there was none to succeed in the place of their mother by the first? Such a law would render female virtue in higher life less vincible, as well as the seducers of that virtue less urgent in their suit, by curbing the passion for splendor, amusements, and distinctions, commonly found in that description of women, who would become the objects of such a law. Other provisions might also be contrived, to confine the punishment to the person of the offender, by suffering the estate to go to the heir, or remain in the family, of the ancestor from whom it came, or to attend the appointments of his will.'

fact no marriage, in consequence of impediments then subsisting: for as the parties are charged to make known such impediments, the contract is supposed to take effect only on the supposition that no such impediments exist, and is consequently dissolved when they become known.

CHAP. VIII. MARRIAGE.

In almost all countries marriage is made a religious ceremony, although it is naturally a civil contract merely; and even where the Jewish and Christian Scriptures have been appealed to as guides in legislation, marriage was not ordained to be celebrated as a religious rite in churches till the thirteenth century after Christ. During the time of the Commonwealth in England, it was solemnised before justices of the peace; [and in Scotland, still less solemnity is required even now to constitute a legal marriage.]

Formerly, the husband bought his wife from her family; at present, the wife frequently buys the husband, and by such alteration in fashion has obtained what she previously wanted, the chance of continued attention, which her personal attractions could not always secure.

On this principle of purchase, the ancient Assyrians made an improvement by selling their women at an annual auction, and devoting the sums obtained for the most handsome as portions for the more homely, and thus secured the marriage of all.

In England, the marriage is a contract on the part of the husband to love, comfort, honor, and keep his wife; and on that of the wife, to obey, serve, love, honor, and keep her husband, in every change of bodily health and worldly wealth; and both engage to keep only to one another during their joint lives.

This contract, accompanied with certain religious ceremonies, as it partakes of the nature of an oath, so the guilt of its violation is to be tried on the

same grounds as those on which the violation of an oath rests.

The peculiar feature in this contract is, that while other obligations are similar, obedience is promised on the part of the wife alone. But, however contrary such a stipulation may appear to the natural rights of the sexes, whom God has made equal in their respective stations, it is practically of great utility, as it prevents contests for superiority. Besides, what is decisive on the question, the wife's obedience is so peremptorily enjoined by the Christian Scriptures,[1] as to deny free-agency, except in acts in themselves criminal.

Although nothing is said in the marriage vow respecting the feeling which the parties may have to each other, on the ground of preference or not to all other individuals, it is plain that no one can conscientiously marry a particular person while they feel that such preference will render them incapable of acting up to the letter or spirit of the marriage vow.

Equally guilty of such prevarication is he, who, without feeling such actual preference, is conscious of the existence of dislike to the party with whom the marriage is to take place; or who, without such actual dislike, marries with an intention to commence or renew a connexion with another woman.

The marriage vow is violated, 1. by adultery, and 2. by any conduct of one party done with the view to produce the unhappiness of the other.

In various countries of Europe the consent of parents if living, and if dead of guardians, is required for the marriage of persons under age; a term which, though applied to different periods of life in different places, does in all indicate one period for sons and an earlier period for daughters, and thus conforms to the law of nature, by which females can fulfil the duties of mothers at an earlier age than men can those of fathers.

[1] Eph. v. 24. 1 Pet. iii. 1—4.

CHAP. IX. DUTY OF PARENTS.

The virtue which confines its exercise within the circle of a man's own family, is, it is said, only selfishness refined. And yet, it may be asked, Is not virtue the most valuable where it produces the most good? and where can the most good be done so effectually as in our own circle? Besides, while the happiness of each individual part is thus upheld, is not the happiness of the whole increased?

If then such a virtue be lightly esteemed, it must owe its inferior estimation, not to a view of its effects, but motive; nor can it be denied, that, as it is possible so to unite our children's interest with our own, that we can often pursue both at the same time, the charge of selfishness will be borne out, unless it can be shown, that, in the prosecution of such objects of common interests, important duties of another kind have not been neglected.

As regards the attention due to children, the act is indispensable; but its motive is not often meritorious. Hence, though the attention to such duties does not raise a man in the scale of virtue, a neglect of them justly sinks him deep in disgrace, as exhibiting his want, not only of parental affections, but also of moral principles to supply their place.

But it may be said, there is no necessity for such principles, supplied as they are by instinct. Yet, as the instinct may be checked or diverted by the wants of the parent himself, such a stimulus is not without its use in exciting the dormant energies; nor, in truth, without a sense of duty, the result of moral principles, can the conduct of the parent be deemed a virtue.

Some moralists tell us, that parents are bound to do all they can for their children: but, at this rate, every expense which might have been spared, or every profit omitted which might have been made, would be criminal.

The duty of parents has, like other duties, its limits; and its rules may be classed under the heads of maintenance, education, and a reasonable provision for the child's future welfare.

I. Maintenance. The wants of children demand a maintenance from some person; and as none have a right to burden others with the consequences of their own acts, the parents alone are bound to support them. Besides, the provision made for the nourishment of the child by the mother's milk, indicates directly, and the instinct of affection on the part of the father, indirectly, the intention of God as to the parties bound to maintain their offspring.

Hence is seen the guilt of those, who, when alive, desert their children, legitimate or illegitimate, or, previous to their death, neglect to lay up such provision for their support as they might have done by frugality, diligence, and a sacrifice of selfish enjoyments.

Little as the Christian Scriptures concern themselves with maxims of a worldly-minded nature, yet on this point they are very explicit. 'If any provide not for his own, especially those of his own household, he hath denied the faith, and is worse than an infidel.'[1]

II. Education. By this word is intended the preparation made in youth for the child's future life.

Education is necessary to check habits of vice and to cherish those of virtue; and without occupation, the result of education, a youth falls into mischief from mere idleness. For as in civilised society every thing is the effect of art, the child, who is not taught some art, of necessity acquires idle, and consequently mischievous habits.

Next to the evils of not educating, is the giving

[1] 1 Tim. v. 8.

youth a lazy and precarious calling, which, unfitting them for situations requiring personal restraint or continued mental exertion, induces the habit of resorting to temporary expedients for support, instead of seeking permanent occupation.

In lower life, parents fulfil their duty by educating their children to an honest handicraft calling; but in the middle orders of society, children should be prepared for a higher profession, or furnished not only with the means of living without one,[1] but instructed in such liberal arts as will prevent them from becoming useless or mischievous members of society.

But though all children do not require the same education, all require some. Hence, he who is content to maintain, without educating also his illegitimate children, omits one half of his duty as a parent.

III. A reasonable provision for the child's welfare will be made by furnishing him, 1. with a situation suited to his fair expectations; 2. with the means of supporting such a situation; and, 3. with a probable security for his moral conduct.

The situation suited to the fair expectations of children will depend on the supposed means of the parent, of which his station in life is the measure; and the parent performs his duty fully, who educates his children so as to fit them for a station similar to his own. On the other hand, it is equally fatal to the future happiness of children to educate them either above or below their fair expectations; for in the one case, their hopes are directed to objects not attainable; and in the other, their ideas, ill adapted to a change of for-

[1] Amongst the Athenians, if the parent did not put his child into a way of getting a livelihood, the child was not bound to make provision for the parent when old and necessitous.

tune for the better, prevent their rational enjoyment of the good thrown in their way.[1]

But in thus indulging the reasonable expectations of the child, care must be taken that no sacrifice be made of what is due to exigences. Of such exigences custom can best define the nature and limit; and all that can be said here is, that, as custom has annexed to certain stations the enjoyment of certain pleasures, a young person, who is withheld from sharing in them from a want of fortune, can scarcely be said to have a fair chance of happiness. Hence, in the disposition of property at death, care should be taken to provide means to meet such exigences, to be regulated by a correct view of the different situations for which the children have been fitted, and the various success they have met, or are likely to meet with.

From the few lucrative employments left to females of small means, daughters deserve the particular care of the parent; and as with diminished means the chance of their marriage decreases, they have a right to expect a provision in their favor, even to the decrease of the fortunes of the sons.

But when these exigences have been provided for,

[1] Although the education must vary with the means of the parents, yet in all cases the health and virtue of the child must be the first consideration. In respect of health, all out-door occupations are preferable to in-door, and active to sedentary employments. In respect of virtue, all dealings, where the benefit to both parties is reciprocal, are preferable to those, where one man's gain is another's loss, as gambling speculations in the funds or in goods. Trades also, where the profits are dependent on our exertions, are better than fixed salaries, equal in amount to the profits; for, in the former case, there is generally a pleasing mental activity, which is wanting in the listlessness or sameness of the occupation affixed to the latter. In respect of security, trades connected with manual arts are better than those connected with merchandise; and situations which admit of early marriages are preferable to those that require a longer time for a larger establishment.

the parent ought to satisfy the expectations of his children, arising from the customary rights of primogeniture, and of difference of sex. Of such rights, apparently irrational, it may be stated in defence, that the same property divided equally amongst many would make all of them idle, whereas the unequal division makes only one so; which is the less evil of the two. Besides, in a society where the majority prefer the claims of sons to daughters, in the fewer cases where the same preference is not given, the sons will have reason to complain of injustice done to them. For as, by the operation of the more general plan, they will suffer in the amount of their wife's fortune, they ought not to suffer also in the diminished amount of their own, inherited under the less general plan. Further, as money is likely to be more productive in the hands of men than women, the preference ought to be given to sons over daughters, whenever the exigences and reasonable expectations of the latter shall have been previously satisfied.

From the utility of throwing every discouragement in the way of illicit intercourse, some difference may be made between children legitimate or not. But nothing can justify the neglect to educate illegitimate offspring, or to provide for them the means of preserving them in the station to which the parent himself has introduced them.

When a provision for the exigences of a child has been made, the parent is at liberty to punish its previous improper conduct by any diminution of property; for a bad child has no reason to expect, and hence no right to receive, the same kindness from his father that a good one has.

The only case where a parent is justified in disinheriting a son, almost entirely, is when the conduct of the son is such, as to give the father reason to believe, that, if the son possessed property, he would waste it, as little controlled by reason, as if he were a per-

fect idiot. But even here means ought to be provided for his support in the shape of an annuity, arising from property he cannot alienate.

In the distribution of property, it has been said, that a parent has a right to do what he will with his own. This expression is true, if, by right, be meant a legal right; but he possesses no moral right to disappoint the fair expectations of his children by any feelings of caprice alone; for, if all conduct themselves equally well, all ought to be equally dear to him, though all may not equally possess the same power to gain his good graces, by playing on the weakness of his nature. To meet these future demands on his fortune, a parent is bound to regulate his present means with frugality, and to be just before he is generous. But though the plea that charity begins at home is good up to the point, where reason says, that to give to those who want, by taking from those who also want, is only robbing Peter to pay Paul; the same plea cannot be urged to justify parsimony, where a sufficiency has been already obtained: for beyond that point, as the use of wealth decreases, so ought the desire of it to diminish, even on the children's own account; whose chance of well-doing, so far from being increased, is lessened by such access of fortune. Of those who have died rich, few have begun with much; and, in respect of enjoyment, self-love throws a charm about wealth gained by one's own exertions, that is wanting in property merely inherited from another.

The last and most important duty of a parent is to secure the moral conduct of his child. The parent who believes that man is an accountable being, and observes that the acts of manhood are, to a certain degree, the results of youthful instruction, will feel himself bound to attend equally to a child's moral conduct and worldly welfare; since neither singly can secure the child's happiness both here and hereafter.

To attain this object, the most effectual step is to inculcate the doctrine of a future state of rewards and punishments; and the doctrine will be inculcated most successfully by the parent's attention to his own conduct, regulated by the conviction of his accountability. Solemn exhortations, at variance with acts, will produce either no effect, or a mischievous one; while punishments, prompted by sudden provocation, as they discover more of anger than principle, tend rather to create an aversion to the person forbidding, than to the thing forbidden.

Next to the possession of virtue, the parent should endeavor to make it appear amiable, and thus induce a child to receive what would otherwise be loathed, if presented in a repulsive form: for as youth are equally violent in their likings and dislikings, there is reason to fear that parsimony or piety, for instance, if insisted on too strongly, will be rejected as inconsistent with the rational enjoyment of money and mirth, and their place be supplied by the opposite feelings of profusion and irreligion.

Independent of the parent's own conduct, as forming a model for the child's imitation, attention should be paid to the peculiarities of the youth's disposition; which may be improved by placing him where motives will present themselves of self-correction, rather than of self-indulgence.

Instead, therefore, of placing penurious tempers in trade, dissolute youths in the army, and crafty lads in the law, a parent ought to choose situations quite the reverse; and as education should give rather what the youth does not possess, than what he does, since it appears, that at public schools more literature and more vice is acquired, quick parts more cultivated, and slow ones more neglected, while, under private tuition, though less learning be attained, it is attained with more certainty; that system ought to be adopted which

is likely to check rather than quicken the impetus of natural inclinations.

CHAP. X. RIGHTS OF PARENTS.

The rights of parents result from their duties. If the parent is bound to attend to the welfare of his children, he has a right to demand their obedience to his authority, by which such obligations are to be fulfilled. But as the duties of the parent are the sole foundation of his right, so his power cannot naturally extend beyond the exercise of such duties.

Hence, since parents have not the right, in the persons of their children, which was allowed by the Roman law, they cannot sell them; nor can the masters of slaves assert, as the English do in the West Indies, a right to the children of slaves; for the masters can only possess, what the slave has a right to part with, his own personal freedom.

Nor can a parent, by virtue of his authority, require a child to do an immoral act, nor even to be a party to any act by which its happiness would be sacrificed, to gratify feelings of merely a personal nature to the parent: for as the authority is given with a view to increase, and not diminish the child's happiness, its exercise must be confined to the attainment of the former object alone.

But as provision must be made sometimes for the future welfare of children before they can judge for themselves, parents have a right to choose situations for them.

In questions of disputed authority between the parents, as the wife herself must obey the husband, so must the child obey rather the father's than the mother's commands.

As the rights of the father result from his duties, it is immaterial whether the father performs personally such duties, or delegates them to another. Hence, a

guardian or tutor has the same rights as the father has to the child's obedience.

CHAP. XI. DUTY OF CHILDREN.

I. Until children have some notion of the difference of moral acts, they can have no duties: but during the interval between the dawn and maturity of reason, as an obligation falls on the parent to command, the child is bound to obey on such points as the parent may deem necessary for its good, even though such necessity may not be apparent to the child itself.

II. As long as grown up children remain voluntarily members of the father's family, they are bound to conduct themselves towards their parent, as they would towards any other person into whose family they might be admitted; nor must they presume on the strength of relationship for an exemption from acts required by the parent for the welfare of his family.

III. After the children have left the father's family, the gratitude due to a parent differs only in degree from that due to any other benefactor, and is the greater only, as the kindness received from the hands of the parent is greater than what is received from any one else.

With regard to the many indefinable acts by which filial gratitude may be shown, it is sufficient to observe, that, as declining years demand a continued exertion, on the part of children, to promote the enjoyments and soften the anxieties of aged parents, however irksome such a duty may seem to younger persons, it ought to be cheerfully performed, from the consideration that the infirmities of age can hope to find no indulgence except in the piety and partiality of children.

Since the chief points of difference between parents

and children turn on the choice of a profession or a partner for life, it is necessary to define the respective duties of the parties.

A parent is bound to increase the happiness of his child. Hence, he cannot insist on his child choosing a particular profession or partner, nor is he justifiable in holding out any threats of present or future displeasure for a non-compliance with his caprice. All that he can fairly do, is to represent correctly his view of the step to be taken, and to require of the child to give himself such time for reflection, as will enable him to see whether his present feelings are of a permanent nature or not; and should the result of such reflection be only a confirmation of the child's previous resolution, the parent is bound to yield. And on the other hand, the child is bound to act fairly with his parent, and to endeavor so to employ the time agreed on, as to destroy, if possible, his previous predilection, and not with the view of obtaining his end by an act of pretended reflection.

But it may be said, that though a parent cannot compel a child to marry as he pleases, he may oppose the choice of the child. But as this case differs from the other only in the intensity of the suffering, because it is easier to live without a person loved than with one hated, it does not affect the principle, which denies the parent's right to do any act, the tendency of which is to diminish the happiness of the child.

Since the interference of the parent with the moral conduct of the child is grounded only on the utility of such interference, as tending to the happiness of the child during the period, when, from the very nature of its constitution, it is incapable of judging correctly for itself; if the child be competent to judge for itself, the parent's right to such interference ceases with the necessity for its use. Hence, of a secret, for instance, confided to a child, the parent has no right to demand the disclosure, nor to require the violation of any trust

reposed in him, and which, as he was expected, so is he bound to discharge, without the interference of the parent in any way.

The duty of children to their parents, as ordained in the Decalogue, is confirmed directly by Christ in many parts of the Gospel, and indirectly by his reproof of the casuistry of the Jews, who attempted to evade the positive duty of supporting their indigent parents, by pretending to devote to the service of God the sum which the parents were entitled to demand.

Agreeably to this precept of nature and Christianity, children in England are bound by law to support their parents or remoter ancestors, in need of support.

By the Jewish law, disobedience to parents was an offence which the magistrate could punish with death.[1] St. Paul, however, merely enjoins children to be obedient to their parents, because 'it is right,'[2] or 'well-pleasing to the Lord;'[3] from which it may be inferred, that moral rectitude, and conformity to God's will, were, in his opinion, the same.

[1] Deut. xxi. 18. [2] Ephes. vi. 1. [3] Coloss. iii. 20.

BOOK IV.

DUTIES TO OURSELVES

Strictly speaking, there are no duties or crimes which begin and end with a man's self; and only three which can be classed under that head, viz. 1. the rights of self-defence; 2. the crime of drunkenness; and, 3. the crime of suicide.

CHAP. I. RIGHTS OF SELF-DEFENCE.

It has been said, that in a state of nature a man may defend a perfect right, however trifling, at any cost; but this is doubtful: because, 1. no general rule is worth sustaining at such expense; and, 2. it cannot tend to general happiness, that one man should lose a limb or life, merely that another may save a little property. Still, as a perfect right depends on its value alone, and as it is impossible to ascertain when the value will justify the extremity of violence in its defence, the person attacked must decide, as he best may, between the general consequence of yielding and the particular effect of resistance.

But in civil society this right is, at all events, suspended; for there the property is either protected against attacks, or, if destroyed, the law is at hand to grant reparation; and as, in either case, the party receives the assistance of the law, so is he bound not to take the law into his own hands.

But if, instead of property, life be endangered, every defence, even to the destruction of the assailant, is justifiable; for it cannot be shown that a man is bound

to prefer another person's life to his own; a maxim which even the expression of 'love thy neighbor as thyself,' does not warrant. This licence exists also in civilised society in cases, where the law, by the supposition, does not grant protection, nor can give reparation. The rule is of course restrained to extreme cases, and when, after all other means of escape have been ineffectually tried, the question is at last whether ourselves or the other party must perish.

The case which, next to the defence of life, would justify acts of extremity, is the defence of chastity; for there the law can make no reparation. With the exception of these two cases of actual assault on the person or chastity, homicide is unjustifiable, unless when authorised by the law, 1. to prevent the commission of a crime, which, if committed, would be punishable with death; and, 2. to put down riots or similar acts of hostility to the government. But as, in both cases, the individual is merely an agent of the law, he is bound by the rules of the law; and, consequently, though he may kill a housebreaker at night, he must not do so in the day-time;[1] nor can he fire on a mob, till the riot act has been first read.

CHAP. II. DRUNKENNESS.

By drunkenness is here meant habitual intemperance; although each specific act is blameable, as tending to confirm the general habit.

The guilt of drunkenness is to be estimated from the tendency of its mischievous effects. 1. It leads to acts or words of anger or lewdness: 2. it interferes with the performance of the duties of a man's station: 3. it leads to extravagance: 4. it produces unhappiness to the drunkard's family: 5. it shortens life: and, lastly, it corrupts by example.

[1] This distinction, by a remarkable consent of legislation, is found in the laws of Judea, Greece, and Rome.

But it may be said that the age and temperature of one drunkard may leave little to fear from the inflammation of anger or lust; that the fortune of a second may not be injured by the expense; a third may have no family; and the constitution of a fourth may even defy the effects of drinking. Still, as drunkenness is a social vice, if by his example an effect be produced, which without it would not be produced, his guilt is to be estimated by the mischievous effect of the example operating on persons less able, either from their means or constitution, to guard themselves against evils, from which the drunkard himself may be secure.

Drunkenness is repeatedly forbidden by St. Paul,[1] as inconsistent with the Christian profession.

It has been asked, how far is a drunken man responsible for his acts?

The answer is, if the man be so drunk as to lose all consciousness, his guilt, as regards the mischief done, is no more than that of a man insane. He is, however, chargeable with the guilt of wilfully getting drunk; and as the unintentional mischief was the result of the wilful drunkenness, or at least of drunkenness not wilfully avoided, the guilt of the drunkard is to be measured by the probability that such mischief is the result of drunkenness. Hence, the guilt of a drunken man's act of mischief is to that of a sober man's similar act, as the probability of such act being the result of drunkenness, is to absolute certainty. Hence, all acts, which are the certain effects of drunkenness, are nearly as criminal as the same acts done by a man in his sober senses.

If consciousness be only partially lost, the drunken man is excusable only to the extent of such partial loss.

But as the ideas relating to proportional quantities

[1] Rom. xiii. 13. 1 Cor. vi. 9. 10. Eph. v. 18. 1 Thess. v. 7. 8.

are easier understood by adopting the language of arithmetic, let us suppose the guilt of the sober man, and in a state of perfect consciousness, =1. Then the guilt of the drunken man, who retains only half his consciousness, will = $\frac{1}{2}$. Hence, if the probability of the mischief be one half of the certainty, the guilt will be as $\frac{1}{2} + \frac{1}{4}$ ($= \frac{3}{4}$) to 1; if more than one-half, the guilt will be more; if less, less.

But whatever may be the measure of guilt, the ill effects, physically speaking, are the same; and as, of all habits, drunkenness is the most insidious in its progress and becomes most powerful by indulgence, it requires less prudence to resist it at first, than it does firmness to overcome it at last. The victory may, nevertheless, be gained by resolute efforts. For as inebriety is a social vice, and recurs chiefly at intervals of time, when the man given to drink is likely to meet with boon companions, the fascination of their society must be first avoided by a change of place, profession, or pursuit; and as the motive for intemperance ceases, the act itself will cease also; or if the habit result from a desire to banish sorrow, the remedies already recommended will be found equally efficacious, especially if backed by the resolution to abstain entirely from an indulgence, which only increases the evils it pretends to cure. But such resolutions must never be suffered to yield to extraordinary occasions, through the fear of their too frequent recurrence; and, on the other hand, if the rule be strict, the act of abstinence will be less than the fear to break the rule: besides, if the rule to abstain be known to acquaintances, we are not exposed to their importunity to break it.

There is a difference, no doubt, between convivial intemperance and solitary sottishness; but as the former generally leads eventually to the latter, the difference is rather in degree than kind.

CHAP. III. SUICIDE.

May not any man, if he pleases, take away his own life innocently? Certainly not, if the guilt of an act is to be measured by its general consequences. Particular cases of suicide may arise, in which the individual mischief may be none; and the same may be said of murder; yet, as murder is not therefore excused, so neither can suicide be considered innocent on that ground alone.

But if a man's life be useless to himself and to society, has he not a right to take away what is thus useless to all? Yes, if the uselessness can, which it cannot, be proved. But no man, be his state ever so wretched to himself, is useless to society. Besides, the latitude of the rule is a proof of its inherent impropriety. For suppose it were lawful for one person to kill another, when the life of the latter was deemed useless by the former, would not a law of such latitude warrant indiscriminate murder, and thus, by its latitude, show its inherent iniquity? Now, as a similar rule would, in the case of suicide, admit of equal extension, it would be equally improper.

But may not a man commit suicide, when, of those he leaves behind, not one will lament for his death?[1]

[1] In combating this objection, as Paley's language and logic are equally obscure and unsatisfactory, his meaning could only be guessed at in his words—'Or, rather, shall we say that to depart voluntarily out of life, is lawful for those alone who leave none to lament their death? If this consideration is to be taken into the account at all, the subject of debate will be, not whether there are any to sorrow for us, but whether their sorrow for our death will exceed that which we should suffer by continuing to live. Now this is a comparison of things so indeterminate in their nature, capable of so different a judgment, and concerning which the judgment will differ so much, according to the state of the spirits, or the pressure of any present anxiety, that it would vary little, in hypochondriacal constitutions, from an unqualified licence to commit suicide, whenever the distresses which men felt, or fancied, rose high enough to overcome the pain and dread of death. Men are never tempted to destroy

No: for the lawfulness of the act cannot depend on the positive quantity of pain felt in consequence of such act, nor on the relative proportion of pain, which one party feels by continuing to live, and the other would feel from the suicide's death. Besides, although such a restriction might justify the act in that particular case, it cannot be adopted as a rule, from the licence it would give generally to persons to weigh their own pains against those of another, and to decide on a question of life and death through the confused medium of a distempered mind.

Since, then, every reason that can be assigned to justify an individual act of suicide, is objectionable on the ground of the general consequences resulting from the permission of a single act, it is necessary to state what would be the consequences productive of such general mischief. These are, 1. the loss of many lives, that might be useful; 2. the affliction of many families, and the consternation of all, who now rest secure in the motives of religion and morality against the commission of an act to which there are many excitements; and, 3. the withdrawal of the example of persons, who, by bearing their sufferings with resignation, thus testify their trust and confidence in God. The last reason, it is true, does not prove suicide to be a crime; but it holds out a motive to dissuade us from it, which is the next step to proving its actual guilt; [for if it were not wrong, no such dissuasion would be necessary.]

The preceding considerations apply to suicide in general. Besides, each case will be aggravated by

themselves but when under the oppression of some grievous uneasiness: the restrictions of the rule therefore ought to apply to these cases. But what effect can we look for from a rule which proposes to weigh our pain against that of another; the misery that is felt against that which is only conceived: and in so corrupt a balance as the party's own distempered imagination?'

circumstances peculiar to itself, from the duties deserted, and claims defrauded; from the misery direct or indirect inflicted on friends, and the reproach thrown on our calling; together with the suspicion raised against the sincerity and efficacy of our religious and moral feelings.

The common topics of 'deserting our post,' and 'rushing uncalled into the presence of our Maker,' are omitted, not because they are common, for that would be rather a proof of their truth, but because they are easily answered.

The question has been hitherto treated as one of natural religion, backed, however, with a belief in the existence of a future state; a consideration indispensable in all reasonings on morality. As regards revealed religion, the question of suicide is no where directly touched on, nor can the prohibition against murder be applied to it. Sufficient has nevertheless been left us in the Scriptures to enable us to draw strong presumptions against the act. For instance, such expressions as, 'Let us run with patience the race that is set before us,' and 'Ye have need of patience, that, after ye have done the will of God, ye may receive the promise,' speak so plainly the necessity of submission to suffering, as to leave no doubt that the disciples of Christ are not at liberty to avoid such sufferings by self-destruction; for if such licence had been intended, it is reasonable to suppose that, instead of considering the chastening of the Lord as intimations of his love, some hint would have been given of the virtue of seeking relief in a voluntary death from the persecution of men.

This view of the presumed intentions of the Christian Scriptures is supported by the conduct of the apostles themselves. Persuaded of the existence of a future state, and sure of enjoying its happiness, they must, while suffering in this world every kind of misery, have looked on death as a gain. Yet not one

of them endeavored to hasten the period of enjoyment by suicide, to which as they had the strongest motive, so they could have an aversion grounded only on their consciousness of its immorality.

Such are the arguments by which a Christian moralist may disprove directly the lawfulness of suicide; nor is it necessary to enter on reasons of a less direct kind, with the exception of one, which, more imposing than the rest, demands a more specific answer.

It has been said, then, that if a man has no right over his own life, the state can still less have a right over it: for as the state possesses only what the individual has a right to give, if the latter has no right over his own life, he has none to give to the state. Hence, the state can neither take away life for crimes, nor require the individual to expose his life in war, especially in offensive hostilities, where the right of self-defence cannot be pleaded; and still less can the prodigality of life in battle be a virtue, if its preservation be a duty.

To this it may be replied, that the state does not claim the right over a man's life from any tacit or actual consent of the subject to part with what is his own, but as the gift of God; and as society finds such a power expedient for the promotion of general happiness, it presumes that God gave such a power, and intended it to be exercised; a presumption, which alone constitutes not only this, but every other right. Hence, if similar reasons existed to show the expediency of suicide, its lawfulness would be at once proved from its presumed agreement with the will of God. But until it be shown that suicide can be as advantageous to the state as are capital punishments, or even a prodigal waste of life in war, there is no room for granting to a man the power to take his own life, on the ground that the state is permitted to take it also.

BOOK V.

DUTIES TOWARDS GOD.

CHAP. I. DIVISION OF THESE DUTIES.

In one sense every duty is a duty towards God, since his will alone makes it a duty. But here those duties alone are meant, of which God is exclusively the object.

It is certainly possible that outward worship may be less acceptable to God than that internal devotion, which silently sees and admires the Creator's wisdom and benevolence, and, referring to him as the Giver of all Good, looks to him as a present help in trouble: yet the former, though excelled, not superseded by the latter, comprises the duties of which the moralist can alone take any cognisance.

The duties towards God consist of active worship and passive reverence: by the one we are led to church on a sabbath, by the other induced not to travel on the Lord's day.

Divine worship is made up of adoration, thanksgiving, and prayer; the last of which, embracing in fact the two former, will form the subject of our present inquiry.

CHAP. II. DUTY AND EFFICACY OF PRAYER, AS SEEN BY THE LIGHT OF NATURE.

In all ages and countries the medium of intercourse between man and man is, when favors are sought, earnest entreaty. Now, as what is universal must be natural, it is fair to infer that God expects at least the same

entreaty from man, that man requires from his fellow-man; and a similar remark is equally applicable to thanksgiving for a favor received.

But as none can reasonably pray to a being from whom he expects to gain nothing, the duty of prayer must depend on the expectation of its efficacy. To this expectation, however, it has been objected, that, if God be all-wise and all-good, he will give us what we need without asking; but if we ask what he knows we do not stand in need of, we cannot expect to obtain it even by our prayers. To this it may be replied, that God may grant, as consistent with his wisdom and goodness, to entreaty, what, without such entreaty, might with equal wisdom and goodness be withheld; although it must be confessed that the virtue of prayer can at best be but doubtful, if it can make that favor to be consistent with wisdom, which would not have been equally so without it. Now, as in solving this doubt consists the whole difficulty of the question, the following probabilities are offered for consideration.

That, as a benefit obtained without asking is received without gratitude, God may grant to entreaty, what without entreaty would be withheld, merely with the view of keeping alive in the mind of the supplicant a sense of dependence on the Deity; which, if obliterated, would tend to the increase of moral depravity generally, by breaking the connexion in idea between God and man.

But, after all, whether this or any other motive may influence the Deity to grant the prayer, is not the question. It is sufficient for the supplicant to know that there is no inherent absurdity in conceiving that God will grant to prayer, what he would otherwise withhold. To inquire further is not necessary for devotion, but rather inconsistent with it.

But though prayer may thus be offered to God, it must not be offered with the same view, as when we

address a fellow-creature, to acquaint him with our wants or to tease him by importunity, and to lead him to do what he ought to have done before, or not do at all.

However inscrutable, or even inconceivable to man, may be the considerations which actuate the Deity to grant a favor to a suppliant, which if not asked for would be withheld, still such difference in the conduct of God will not be at variance with his attribute of wisdom and goodness, if we allow that he may see enough in the different acts and feelings of the party praying, and not praying, to justify such difference in his own behavior towards them.

The objection to prayer supposes, that an all-wise Being cannot be led to change his resolution in consequence of entreaties. But if wisdom consist in effecting the most beneficial ends by the best means, it can be no part of perfect wisdom not to change, if the change produced by entreaties be itself a part of those best means: we say, a part of those means, because the objection rests on the supposition, that there is only one mode of acting for the best; a supposition not warranted by our knowlege of the Divine Nature. Hence, when we assert that God must act in a particular way, we use language that virtually denies free agency to God, by subjecting him to the necessity of abiding by the one rule of perfect rectitude.

But it is said that experience does not prove the efficacy here ascribed to prayer. Still, it is replied, the prayer may be efficacious, though the experience of such efficacy be, and, we add, must be, at times, obscure. For if the efficacy were so observable as to be able to be relied on beforehand, the consequence would be the manifest mischief of producing a careless reliance on prayers alone, instead of calling into exercise the other duties which man is required to fulfil; and all the checks to inordinate pleasure, founded at present on the dread of subsequent pain, would be

destroyed, if prayer could infallibly remove the pain. Since, then, this ambiguity respecting the efficacy of prayer is necessary for the happiness of man, we have no right to ground the denial of such effects on the non-production of proof necessarily wanting.

Other objections to prayer are directed, not against the use of it, but its abuse, in consequence of the introduction of improper subjects into forms of public and private worship; and, it has been said, that to pray for particular favors is to dictate to Divine Wisdom, and savors of presumption; as if we could know better than God what is best even for ourselves, much less for others. But how ignorant soever we may be of the whole plan of God's moral government, the objector should know, that in such prayers we merely ask for one man to be made the instrument of another's happiness, an event in accordance with the general course of human affairs. Why, then, may not our happiness be made to depend in some cases on the prayers of others, as it really does on their acts? If the caprice of one person can produce the misery of many, why may not the prayers of many operate, through the power of God, to destroy the caprice of that one individual?

CHAP. III. DUTY AND EFFICACY OF PRAYER, AS REPRESENTED IN SCRIPTURE.

The arguments hitherto adduced in favor of prayer are chiefly of a negative kind, and merely go to prove from the light of nature that the efficacy of prayer is not inconsistent with the attributes of the Deity. The proof that they are actually efficacious must be obtained from the Scriptures alone; where, with the positive command to pray, we are as positively informed of God's acceptance of prayer. But although without such assurance of acceptance we could have no motive to pray, we are not taught to place such dependence on prayer, as to neglect other obligations,

or to expect, as evidence of the efficacy of prayer, the occurrence of events at variance with the order of human affairs.

The Scriptures not only affirm the propriety of prayer in general, but furnish also precepts or examples, which justify some topics and modes of prayer that have been thought exceptionable. Of the five heads under which the texts applicable to this subject may be arranged, those which relate, I. to prayer in general, may be found in Matth. vii. 7. Luke xxi. 36. Rom. xii. 12. Philipp. iv. 6. 1 Thess. v. 17. 1 Tim. ii. 8. II. Examples of prayer for particular favors by name, are given in 2 Cor. xii. 8. 1 Thess. iii. 10. III. For directions to pray for natural or public blessings, see Psalm cxxii. 6. Zech. x. 1. 1 Tim. ii. 1—3. IV. Examples of intercession, and exhortations to intercede for others, are to be met with in Exod. xxxii. 11. Acts xii. 5. Rom. i. 9. xv. 30. James v. 16.; and, lastly, declarations and examples authorising the repetition of unsuccessful prayer, are given in Luke xviii. 1. Matth. xxvi. 44. 2 Cor. xii. 8.

To the preceding texts of a positive nature may be added the inference drawn from Christ's dictation of a particular form of prayer, that such service was acceptable to God, and not without avail.

CHAP. IV. PRIVATE PRAYER, FAMILY PRAYER, AND PUBLIC WORSHIP.

As each of these services, however similar in their general character, has its own peculiar use, it does not supersede the performance of the other two.

I. Private prayer is necessary, as the medium of supplication for private wants, which cannot be made the subject of public prayer.

It is useful, as tending to produce more devout feelings than prayers in public, through the influence of

solitude, when a man, withdrawn from surrounding objects, has both leisure and inclination to ruminate on his own thoughts, words, and deeds, and, contrasting them with his knowlege of the promises and threats of the Deity, becomes conscious of the superlative importance of providing for his own future happiness.

Lastly, private prayer is particularly recommended by the authority and example of Christ, as related in Matth. vi. 6. and xiv. 23.

II. Family prayer.

The peculiar utility of family piety consists in its influence on the domestics and younger parts of a household, who in private prayer are unable to express their thoughts, and whose attention you cannot easily command in public worship. Besides, both are wont to attribute the attendance on public worship to other motives than a sense of duty towards God. Add to this, that as the forms and language of public worship are necessarily comprehensive, with a view to embrace the interests of many, they fail to excite that individual interest, arising from the sympathy of a domestic circle.

III. Public worship.

If worship be a duty, public worship is necessary; because without it the great mass of men would have no worship at all. Besides, without the establishment of religious assemblies, they would want that knowlege of the history and tenets of their religion, and those exhortations to moral conduct, which such assemblies most effectually furnish through the easy medium of oral information, conveyed to many as readily as to few, or even a single auditor, instead of the more tedious and less certain method of writings alone.

But it will be said, that if public worship imparts to an individual no information which he wants, nor ex-

cites any feelings of devotion, which private prayer or family worship does not as well supply, his attendance at such assemblies is not only useless, but even culpable, as occupying time that could be better employed.

To this it may be replied, that as the consequence of such non-attendance would be the decay of public worship generally, and of so much of the religion itself as is at present preserved by such attendance, an individual is bound not to absent himself, lest the omission, harmless in his own case, serve as an example for similar negligence not equally harmless in the case of others. The same consideration applies to the impropriety of absence, merely on the ground of objections to certain forms and expressions adopted by the church, but offensive to the notions of the absentee, who does not perceive, as he ought to do, the impossibility of framing a form suited to the feelings of many, which shall not fall short in some points of the ideas of perfection entertained by a few.

Independent of the direct necessity of public worship, considerable advantages are found to arise from the use of religious assemblies, through their tendency to cherish the kindest affections of our nature.

Sprung from the same stock, fellow-travellers on the same road to eternity, dependents on the same Power, and suppliants at the same throne of mercy, with one interest to secure, one God to serve, and one judgment to expect, men so situated must and do feel themselves, for the time at least, members of one large family. The distinctions of civil life, which for six days in the week are claimed without yielding a single point, are all forgotten on the seventh, and the natural equality of man is then forced on the attention of the proudest. If ever the poor hold up their head, it is at church; if ever the rich view them with respect, it is there; and both will be improved the oftener they meet in a place, where the great are

taught humility, and the low exalted by a sense of the dignity of their nature. But as the effect of such lessons cannot be lasting, the frequent return of religious meetings tends to preserve impressions that would otherwise quickly fade; and while it helps to smoothe the rugged passions of pride and envy, it produces a tone of feeling at harmony with the gradations of society, by uniting in a common bond of benevolence the two extremes of rich and poor.

The public worship of Christians is a duty of Divine appointment;[1] while its neglect is censured by the apostle to the Hebrews,[2] in language as applicable to the religious service of the present day as to the times of the primitive church itself; a service which a Christian cannot think himself at liberty to reject, coeval as it is with the institution of his creed, and adopted by every sect into which Christianity has been divided.

CHAP. V. FORMS OF PRAYER IN PUBLIC WORSHIP.

As liturgies, or fixed forms of prayer, are not enjoined in Scripture, they must rest their admission on the advantages they possess over extemporary prayer.

These advantages are—1. that a liturgy prevents the opprobrium thrown on religion by the absurd language of addresses from the mouth of a minister whose zeal outstrips his discretion: 2. that it prevents the distraction attendant on extemporary prayer; for as the congregation do not know the petition till they hear it, they know not, till heard, whether they can join in it; and while the ear and the mind are thus both directed to the matter of the prayer, the devotion of the hearer is suspended till the conclusion of each sentence; and before he can digest one expression, the attention is called off to what succeeds; and the expec-

[1] Matth. xviii. 25. [2] x. 25.

tation of the novelty with which he is gratified interferes with the proper business of the time and place. Hence, such a congregation, while listening to the prayers of a favorite minister, seem more like the audience of a favorite actor than as actors themselves in any exercise of devotion. Besides, as the very object of the religious assembly is to join in prayer, such object cannot be attained by leaving to one person to conceive and deliver a prayer, in which the congregation, ignorant of the subject matter, cannot possibly join.

On the other hand, the disadvantages of a liturgy are—1. that forms of prayer composed for one age become, from the unavoidable change of language, unfit for another; and, 2. that the repetition of the same words produces weariness and inattention. But these objections are, after all, unimportant, since the first can be overcome by occasional revisions of the language, and the second by the exercise of greater devotion; or both even may be considered as trifling, when compared with the greater disadvantages of extemporary prayer.

The Lord's Prayer is a precedent as well as a pattern, authorised by Christ, and who in this respect followed the example set by John the Baptist.[1]

A public liturgy should be—1. compendious; 2. expressive of the Divine attributes; 3. recite only the wants which the congregation are likely to feel interested in; and, 4. contain the fewest controverted propositions possible.

1. The liturgies of most churches might be abridged one-half, and yet no distinct petition be omitted. But such brevity would interfere, if not with the design, at least with the utility of public worship, which, intending to embrace the wants of all, must be unin-

[1] Luke xi. 1.

teresting to those who do not feel such wants; and, consequently, as the attention, if not kept alive by feelings of self, is apt to wander, it must be recalled at intervals by a variety of expressions so suited to the different conditions of men, that even the most heedless may catch a portion of the spirit of devotion. On the other hand, the service must not be tedious, lest indolence find an excuse for non-attendance, and piety be disconcerted by impatience into inattention.

The length and repetitions in the liturgies of the Protestant Reformed Church are the result of an union into one service of what was originally found in three. To remedy this evil, few, except those influenced by the dread of a religious reform, would be disposed to object to such omissions as the combination of several services must necessarily require. If, together with such omissions, the Collects, Epistles, and Gospels were compiled and selected with more regard to unity of subject, and the choice of the Psalms and Lessons left to the discretion of the minister, to adopt what he deemed the most conducive to the instruction of the people, the liturgy of the English Reformed Church would find few amongst friends disposed to blame its defects, and many even of dissenters ready to admire its beauties. With a style calm, yet not cold, and affecting, though sedate, attention is arrested by the solemnity, and retained by the variety in the service, where the transitions from one office to another are diversified like the scenes of a drama, and produce the corresponding effect of excited feelings: and in the complete enumeration of wants or sufferings in the Litany, a petitioner will find whatever he can desire or deprecate, expressed in language at once tender, simple, and effective.

11. That it is expressive of the Divine attributes.

On this point no care can be too great; for, as the popular notions of God are formed from the informa-

tion obtained in religious assemblies, the error of one must lead to the error of many; and as every theoretical opinion on such subjects leads to practical results, the purity or impurity of morals will be affected by the truth or corruption of the forms of public worship.

III. That it recite such wants only as the people can feel interest in.

As all forms of prayer are intended to keep alive the spirit of devotion, and as such devotion must in some measure be connected with the individual interest of the devotee, no topic ought to be introduced likely to damp devotion, by an allusion to points in which the individual is entirely lost sight of. Hence, the state prayers should, if necessary to be introduced, be few and short, and all state style banished, as ill according with the nothingness of human greatness, of which every act, that carries the mind to God, presents the idea.

IV. That it contain as few controverted propositions as possible.

The object of public worship is to unite as many as possible in one bond of common feeling. Hence, as the introduction of controverted points tends, by excluding some, to interfere with the object in view, it gives rise to an evil on the part of the excluded, which is not even partially counterbalanced by the unanimity of those admitted; unless it be said that it is a sin to agree in religious exercises with those, from whom we differ in some religious opinions. If, however, the difference exist to an extent such as is found between the Trinitarians and Unitarians, where no place can be left for a compromise, secession is inevitable: all other questions, not touching the essentials of the religion, are best passed over in silence; for if mooted, each sect will assert the

truth of its peculiar tenets with polemic zeal; and while both are guilty of the evils of schism, neither can show the expediency of excluding any from their communion, by mixing up with divine worship doctrines unconnected with the pure spirit of devotion.

CHAP. VI. USE OF SABBATICAL INSTITUTIONS.

An assembly cannot be collected, unless the time of assembling be known beforehand. If required to be held frequently, it is best held at stated intervals; and to prevent, at such intervals, the labor of one from interfering with the leisure of another, the day of assembling ought to be the same for all. If, then, public worship be a duty, it is equally a duty to set apart some periods for the performance of it, so that, as all ought, all may share in it alike. But as the celebration of the sabbath does not occupy the whole day, the portion unoccupied is a mere rest from the daily business of life; and he who undertakes to defend the observance of the Christian sabbath as required by law, must show the expediency of such observance, considered politically.

First, then, such stated intervals of rest contribute greatly to the comfort of the laboring classes, as well by the positive relief to their bodies, as by the anticipation of prospective pleasure; the latter of which would be wanting entirely, if the relaxation were casual, and (what is not to be expected from the interested inhumanity of task-masters) even more frequent. Besides, a holiday unexpected comes unprovided with any duty or employment, and is therefore generally spent so as to make it rather a source of pain than pleasure. Now, as the laboring classes form the great majority of mankind, its utility in promoting general happiness is unquestionable; and every man is morally bound, whatever may be his opinion respecting the origin of the institution, to uphold the observance of the sabbath, for reasons even of political ex-

pediency. Nor is there any loss to the community by such intermission of labor: for as in civilised countries there is rather a redundance than deficiency in the supply of hands, the addition of the seventh day's labor would ultimately have no other effect than to reduce the demand; and the operative would, by an abolition of the sabbath, suffer both from the addition to his labor, and the diminution of his wages.

Secondly, persons of all ranks have, by the intervention of Sunday, some leisure, and not more than is barely sufficient, to perform both the outward and retired duties of religion. True it is that all do not so employ their leisure; but that is the fault of the persons, and not of the institution.

Thirdly, such intermission gives a day of rest to the animals employed by man; a benefit expressly intended by the Divine Founder of the Jewish sabbath.

It is true, that none of the preceding reasons prove, why one particular day, or why one day in seven, rather than in six or eight, should be preferred. But as all we contend for is the necessity of some day of rest, we may leave to others to suggest, if possible, a better plan than the one already in existence.

CHAP. VII. SCRIPTURE ACCOUNT OF SABBATICAL INSTITUTIONS.

This subject, as connected with Christian morality, turns on two points:—

I. Does the institution of the Jewish sabbath extend to Christians?

II. Has Christ, or have the apostles, sanctioned directly or indirectly the change of the sabbath from the last to the first day of the week?

With regard to the first question, it appears that although God is said in Genesis to have blessed and sanctified the seventh day, because on that day he rested from the work of creation, still this account is

at variance with the subsequent mention of what appears to be the first institution of the sabbath. For we learn that when the Israelites were fed with manna in the wilderness, they were told to gather food for six days, but not on the seventh; for, in the words of the historian, 'the Lord hath said, *Tomorrow is the rest of the holy sabbath unto the Lord;*' and again, when, in violation of the day, some had gone out to gather manna, and found none, we read that 'the Lord said unto Moses, How long refuse ye to keep my commandments and laws? See, *for that the Lord hath given you the sabbath*, therefore he giveth you on the sixth day the bread of two days: abide ye every man in his place. So the people rested on the seventh day.' But as Moses did not receive the tables at Mount Sinai till after the event here recorded, it is plain that the commandment to keep holy the sabbath day must have been given previously; and as it is shortly afterwards introduced into the Decalogue, it is probable that such mention is only a confirmation of such previous commandment, and not an intimation of its first promulgation at the time of the creation: for had the sabbath been first instituted at the time of the creation, and continued from that time to the departure of the Jews from Egypt, it is strange that no mention should be made of it, or even allusion to it, either in the history of the world before the call of Abraham, or in the lives of the three Jewish patriarchs. Besides, neither in the passage of Exodus is any intimation given that the sabbath, then ordered to be observed, was the revival of any ancient institution which had fallen into neglect, nor is any notice taken of such neglect on the part of the wicked of the earth in the time of Noah; nor, lastly, do we read of any permission given to the Jews to dispense with the observance of such a law, during their captivity in Egypt, or elsewhere.

Since then no mention is made of either the obser-

vance or non-observance of the sabbath for a period of 2,500 years, it is fair to infer that the institution was not known, and that it is mentioned in Genesis only as a reason, given in anticipation, why the seventh day alone was ordered to be kept holy.

This interpretation, which goes to deny that the sabbath was instituted at the creation, is confirmed by the words of Ezekiel; 'Wherefore I caused them to go forth out of the land of Egypt, and brought them into the wilderness, and I gave them my statutes; moreover, I gave them my sabbaths, to be a sign between me and them.'[1] Nehemiah also seems to agree with Ezekiel in fixing the date of the institution of the sabbath; although it must be confessed, that less reliance can be placed on his testimony, from his inverting the real order of events. His words are, 'Thou camest down from Mount Sinai—gavest them commandments, and madest known unto them thy holy sabbath—and gavest them bread from heaven.'[2] Now, what else can 'given' in Ezekiel, and 'madest known' in Nehemiah mean, but 'first instituted?'

With regard to the duties connected with the sabbath, not only Jews by birth and profession, but all who resided within the territories of the Jews, together with their slaves and cattle, were required to rest on that day, under pain of death.[3] The sabbath was besides solemnised by a double sacrifice;[4] and holy convocations, i. e. assemblies, probably for the purpose of public worship or religious instruction, were directed to be held on the seventh day, 'the sabbath of rest.'[5] So scrupulous, in fact, were the Jews in abstaining from every thing that could be deemed labor, that they neither dressed meat, nor even walked more than a sabbath-day's journey, which was about one mile; and though in the Maccabean wars they suffered them-

[1] Ezek. xx. 10. [2] Nehem. ix. 13—15. [3] Exod. xxxi. 15.
[4] Numb. xxxviii. 9. [5] Levit. xxiii. 3.

selves to be slain rather than violate the sabbath by working in their own defence, and though they had in the siege of Jerusalem so far overcome their scruples, as to defend themselves when attacked, they still refrained from all military operations on that day. After the establishment of synagogues, of whose origin nothing is known, the people assembled on the sabbath to hear the law read and explained, and for the exercise probably of public devotion.

But as the seventh day amongst the Jews commenced at six o'clock on Friday evening and lasted till the same hour on Saturday, before any reason can be assigned for the change of the sabbath to Sunday, we have to inquire whether the command, by which the Jewish sabbath was instituted, extends equally to Christians.

Had the sabbath been instituted at the creation, its observance no doubt would have been binding on all who acknowlege the Scriptures; but if the command were first promulgated in the wilderness, it was of course intended for the Jews alone, unless internal or external evidence prove that it was designed for others likewise.

Now as the sabbath is described in Exodus[1] and Ezekiel[2] as a sign expressly between God and the Israelites, it is plain that it could not be a sign between God and other nations also. Hence, its observance was, and was designed to be, peculiar to that people. Besides, as other periods, for example, the first and seventh days of unleavened bread, the feast of Tabernacles and of Pentecost, are recited with the sabbath, and all are considered equally holy; if one be binding on Christians, all are equally so: but since none of the others have been kept as Jewish festivals, so neither ought the sabbath to be kept on the same account. Add further, that while the sabbath was

[1] Exod. xxxi. 16. [2] Ezek. xx. 12.

not enjoined by the apostles to be observed by the Gentile converts,[1] St. Paul evidently considers it as a Jewish ritual only, and not binding on Christians, since he compares such commandments to 'the shadow of things to come, whose body is Christ.'[2]

But to this view of the question it may be objected, 1. that the reason assigned in the fourth commandment for the observance of the seventh day as a sabbath pertains to all; and, 2. that the observance being commanded in the Decalogue, is, like the other laws of the same code, applicable to all.

But it may be replied, that the reason assigned in Exodus is at variance with the one given in Deuteronomy, although the latter is in fact only a summary of the preceding account. Hence, from such discrepancy no conclusion could have been drawn, had not a passage existed capable of settling the question, by showing that God's rest from the creation is proposed as the reason of the institution, even where the institution itself is spoken of as peculiar to the Jews: 'Wherefore the children of Israel shall keep the sabbath—for a perpetual covenant and a sign between me and them for ever; for in six days the Lord made heaven and earth, and on the seventh day he rested and was refreshed.'[3] Hence, we can now understand that different reasons were assigned to meet different circumstances; for if a Jew asked why the seventh day was sanctified rather than the sixth or eighth, he was told, because God rested from the creation on that day; but if he asked why his slaves must also rest, he was told, because he, who had been once a slave, was now able to take that rest which had been denied him in bondage; and thus the institution became a sign both of God's and man's rest from labor.

But although in this view we do not determine the

[1] Acts xv. 23—29. [2] Coloss. ii. 16. [3] Exod. xxxi. 16. 17.

extent of the obligation, still if it had been either naturally right, or ordained with a design to its extension, it would have comprehended all concerned in the reason of the observance. But as the sabbatic rest is a specific law, given with a particular design, it is not binding on all, even though the reason assigned for its enactment be applicable to all.

With regard to the second objection, that since the other commandments in the Decalogue are binding on all, so must the fourth be; we answer that, as the distinction between natural and positive duties was unknown in the earlier ages of the world, duties are enumerated in Scripture as equally obligatory on all, which are in fact limited in their nature; and that if there exist the right to reject one so limited, others may also be rejected on the same ground. Of such confusion of natural and positive duties, instances may be found in Ezekiel [1] and the Acts.[2]

If, then, the law which ordained the sabbath, be binding on Jews alone, Christians are free from its observance, unless it be shown that Christ or his apostles did either directly enjoin, or indirectly appropriate, a certain day for the observance of sabbatic duties.

The practice of holding religious assemblies on the first day of the week was so universal in the early Christian church, that it is fair to presume it originated in some precept of Christ or his apostles. It was on the first day of the week that Christ appeared to his disciples assembled after his resurrection; [3] while his second appearance was in like manner on the first day of the week following.[4] We read of the same custom in the Christian church of Troas, where Paul went to preach; [5] a fact, which, judging from the circumstance of the disciples coming together to break

[1] Ezek. xviii. 8. [2] Acts xv. 29. [3] John xx. 19.
[4] John xx. 26. [5] Acts xx. 6.

bread there, would seem to indicate a regular practice of assembling on that day. St. Paul, too, enjoins the Corinthians 'on the first day of the week to lay by a store, as God hath prospered each man, so that there be no gathering when he came;'[1] a direction which affords a probable proof, that such day was distinguished from the rest by some religious application of it. Lastly, as mention is made of the Lord's day in the Revelations,[2] it is plain, that since no other day was so called, it must mean the first day of the week. But though the preceding arguments go to prove that the first day of the week was appropriated by the churches in Asia to the duties of devotion, evinced by the act of holding religious assemblies on that day, still, in no passage of the New Testament is it even intimated that we are to cease from any labor beyond the time requisite for such assemblies. But this reserve will appear only natural, when it is considered that the observance of a new sabbath would have been impracticable in the primitive state of the church. During Christ's personal ministry, his religion was preached to the Jews alone: but they had already one sabbath, which they were obliged to keep, and did keep; and to them a second would have been superfluous. On the other hand, although the Gentiles had no sabbath, yet, as the earliest converts to Christianity were chiefly of the lower orders, their time was not their own; and, consequently, it would have been useless to enjoin their observance of a day of rest, which the state or individuals would have forbidden from motives of public or private interest, especially as the people already enjoyed ample rest in the recurrence of numerous festivals; and to have insisted on such an institution, in defiance of public opinion, would have endangered, without necessity, the recep-

[1] 1 Cor. xvi. 2. [2] Rev. i. 10.

tion of the new religion: for the institution of a sabbath is, in truth, so connected with civil life, and requires so much the support of civil law, that it can scarcely be made an ordinance of a religion which is not the religion of the state.

The opinion that Christ and his apostles meant to retain the observance of the Jewish sabbath, with a change only of the day, or that the first day of the week was chosen in commemoration of the resurrection, are equally unsupported by the language of Scripture.

The conclusion, then, (for we must follow whereever arguments lead) is, that the assembling on the first day of the week for public worship and religious instruction, is an ordinance of Christ; but to rest on that day from usual occupations longer than such religious duties require, is merely an ordinance of man; binding, nevertheless, on the conscience, like other human laws, from its tendency to increase human happiness; and acceptable, probably, to God, from its similarity to the institution given by himself to the Jews, for similar useful purposes.

CHAP. VIII. BY WHAT ACTS OF COMMISSION OR OMISSION THE SABBATH IS VIOLATED.

Since the obligation to observe the sabbath depends on its utility, the manner of observing it ought to be that by which its utility can be best diffused.

The utility of the institution consists in its tendency, 1. to facilitate the performance of public worship; 2. to increase the sum of human happiness by regular returns of rest from toil; and, 3. to give to persons, necessarily engaged six days of the week in worldly affairs, an opportunity to think of subjects connected with their eternal welfare.

Although amongst the early Christians the first day of the week was chiefly devoted to religious assemblies, yet we learn from Irenæus that the same day

was reserved also for religious meditations. Hence, the Lord's day is violated, 1. by all such employments as hinder attendance on public worship, either entirely or in part, or do not leave time for religious reflections; 2. by unnecessary encroachments on the rest of persons in our employ; 3. by the indulgence in recreations, whose levity is at variance with the graver duties of the day.

But it may be asked, wherein consists the difference, for instance, between walking out with a staff or with a gun, and between playing at cards or in passing the day in idleness? To these, and a hundred similar questions, we reply, that if the observance of Sunday is to be retained at all, it must be retained by such visible distinctions as will best preserve the feeling of respect for the sanctity of the day; and as such respect can be most effectually kept up only by enjoining some acts not done, and prohibiting others usually done, on the remaining days of the week, the line to be drawn between two acts, equally inoffensive in themselves, becomes sufficiently clear when applied to acts to be done or not on the sabbath. Hence, if gaming were always as harmless as it is generally the reverse, still it is ill suited for the occupation of a Sunday, because it has a tendency to destroy, by the excitement of hopes and fears, that tranquil frame of mind, in which the duties and thoughts of religion should always both find and leave us. Besides, as by the indulgence of such every-day amusements, a suspicion is generated in the minds of others respecting the sincerity of our faith; and as an example is thus held out to those, who want some excuse, and are content with any, for their exhibition of a similar contempt for the institution, we are bound to adhere to habits, though founded on custom merely, provided such habits prevent actually a moral mischief; nor can the example of other countries, more lax in this respect, afford any

apology for similar irregularities in our own; because a practice, tolerated elsewhere, does not give the same offence as where it is prohibited.

CHAP. IX. OF REVERENCING THE DEITY.

As the sense of awe felt by the mind, when contemplating the Supreme Being, and which forms a great security against vice, is produced by the habit of using expressions of reverence, so is it destroyed by the habit of using the familiar language of levity, in which many indulge when speaking of the Deity or his works.

God has forbidden, no matter for what reason, the vain mention of his name. Now, the mention is vain, when it serves no good purpose, or when it is used on occasions unconnected with moral or religious duties; and though the Jews interpreted the commandment, as prohibiting the use of the word Jehovah alone, the name which God had given himself,[1] Christ has extended the commandment to every thing associated with the idea of God.[2]

The offence of profane swearing wants even the plea of temptation to commit it; and a practice, which the least resolution can correct, cannot confer a pleasure it would be a pain to lose. Besides, the habit of swearing is prejudicial to the character of the individual, as it betrays a contempt of positive duties, or rather of those duties, for which the reason is not so plain as the command, and affords proof of a disposition on which revelation has produced no effect.

A ridicule of the language, persons, and rites of religion falls under the spirit of the third commandment, as explained by Christ. Besides, such conduct is inconsistent with a sincere faith, which cannot view with pleasure the ridicule of objects, in which it feels the deepest interest, and which indignantly re-

[1] Exod. vi. 3. [2] Matth. v. 35.

jects the attempt to degrade the Deity by a jest. While the infidel laughs at the superstition, credulity, and fanaticism of the religionist, he does not see that the weakest devotee, who zealously aims at securing what he thinks to be eternal happiness hereafter, is a more rational being than he, whose indifference is the very height of folly.

Christianity is but ill defended by refusing to listen to the objections of its adversaries. Serious arguments are fair on all sides; and whilst we would have no inquiry restrained by other laws than those of decency, we are entitled to demand that Christianity be not made an arena for the display of mere raillery; that the cause be tried on its own merits; and that, without any appeals to the passions, or any attempts to pervert the judgment by sinister influence, assent be gained by evidence conducted with logical precision, and with the sole desire to arrive at truth; and that, whatever objections are started, they be put in such a shape as to invite inquiry, not evade it. Had war been thus waged against Christianity, its defenders would have had little to complain of, on the ground of their adversaries' conduct, at present the very reverse of fairness; for, by one unbeliever, all the follies of the popular creed of superstitious ages are assumed as the doctrines of Christ, with the view to overturn the latter by mixing them up with the absurdities of the former. By another, the vices of the sacerdotal order, and their mutual dissensions and persecutions of civil and religious liberty, have been displayed, not with a view to guard the Christian laity against the repetition of clerical iniquity, but to lead the way to an insinuation that religion is a fable, imposed on the fears of a credulous people, and upheld by the fraud of a crafty priesthood. And yet, what has the character of the clergy to do with the truth of Christianity? Ecclesiastics are but men; and, endued with the passions of men, are, like other men, influ-

enced less by the duties of a secluded profession than by the temptations of our common nature. A third has collected accounts of all the wars and massacres occasioned by religious zeal; as if intolerance and extirpation were precepts of the Gospel, and its spirit regulated the intrigues of state craft, or authorised the cruelties of superstition. By a fourth, the variety of popular religions, the rise and fall of hostile sects, the little reason with which creeds are formed, and the greater rapidity with which they are forgotten; the indifference with which the national religion is at one time received, and the zeal with which it is at another time opposed; the bitterness with which men contend for tenets and rituals, of whose meaning and origin they know nothing; and, lastly, the confidence with which the doctrines of Christ or Confucius, and the laws of Moses or Mahomet, are taught or rejected, according as the parties live on the opposite banks of a river, or even on the same side of it, and sometimes by the very same people, to whom the chance of a battle has given a change of masters and religion at the same moment;—these points are, I say, produced as proofs against the truth of Christianity; and, being set off with a vivacity of style, and aggravation of circumstances, lead persons to class the Christian religion of the present day with the superstitions of the past. But this is to deal dishonestly by the subject and the world; for the same representation might be given, whether Christianity be true or false. Besides, may not truth, as well as falsehood, be taken on credit? and may not a religion, founded on evidence accessible to all competent to inquire, be fairly received on the authority of such competent judges, by persons who cannot go into all the details of the evidence?

But if the matter of such objections be reprehensible, still more so is the manner in which they are brought forward. Infidelity is served up in every alluring shape; in verse and prose, in fable and his-

tory, in covert hints and bold assertions, in books of travels, philosophy, and natural history; but seldom with sober argument or pains-taking examination. The coarse buffoonery and hoarse laugh of older scoffers, disgusting to modern delicacy, have given place to refined banter and playful wit. An eloquent writer, besides his more direct and fairer attacks on the Gospel history, has woven into his narrations a continued sneer on the Christian religion, authors, and patrons: but who can refute a sneer? or who can scrutinise, one by one, the validity of the insinuations which crowd his pages; or, suspending curiosity, stop to examine references and weigh reasons, for the truth or falsehood of every sly allusion or passing sarcasm, to the disparagement of the Christian's creed, and, perhaps, to its destruction in the mind of a thoughtless reader?

Nor is this all. Even the poisoned arrows of obscenity have been directed against Christianity; and doctrines the most pure have been profaned by a union with images the least chaste; and as lascivious ideas are the result of sensations the least under the control of reason, the imagination has been worked on to reject the authority and evidence of Christianity by the application of the power of ridicule, which, strong as it naturally is, becomes doubly so, when aided by obscenity; whose crime and danger is not the less, should even the impurity of the thought be covered with the thin veil of language more refined.

Seriousness is not constraint of thought, nor levity freedom; and as in such inquiries, the most important to man, truth alone is, or ought to be, the object, all must abhor such violations of correct reasoning, to say nothing of the indecency, which can be tolerable only to those, who can see little in the Christian religion, even supposing its leading doctrines to be true. But to such adversaries we would say, that

although a future state had been discovered already, it was discovered, like the system of Copernicus, by a happy guess; that he alone discovers who proves; and that, as no satisfactory proof could be given without the aid of miracles, the annunciation of the certainty of such a state, duly attested by miracles, was an event which the wisest would be the first to hail, as a solution of every doubt, and a termination to otherwise fruitless inquiries.

BOOK VI.

ELEMENTS OF POLITICAL KNOWLEGE.

CHAP. I. ORIGIN OF CIVIL GOVERNMENT.

Government at first was either patriarchal or military, that is, of a parent over his family, or of a leader over his followers.

1. Had men been born independent at once, paternal authority would never have existed. But as the wants of infancy demand the care, so its weakness gives rise to the control of parents; and thus a single family exhibits the rudiments and outlines of a government, where one directs and others obey, for the good of all.

To this, the first stage of government, succeeds another, where more families than one are united by the ties of consanguinity, and where all look up to the same head under the influence of feelings of respect which, from its origin being unknown, seems to the parties to be a law of nature.

But though in the course of time the common head drops into the grave, the interests which bound the families together during the life-time of the patriarch cease not at his death; and hence, so far from a dissolution of the society taking place, it is probable that the members of it, having felt the advantages of possessing such a head, would either fix on a successor, or silently permit another to occupy the vacant place; or, perhaps, the first ancestor, anticipating the mischievous effects of disunion, first prepared and then appointed

a successor, to whose rule the other members of the family found it their interest to submit.

A clan, thus formed of many families, sprung from one stock, might fulfil all the purposes of civil union; and as branches continually slipped off to settle in distant lands, separate societies would be established, united still by the various bonds of designed or accidental coalitions.

II. Respecting the origin of a military government, it is easy to understand how, in the case of wars offensive or defensive, a leader might be chosen, and how authority, given him for a single expedition, might be retained even in times of peace, and a temporary power converted into one for life by the management of various motives of action, suited to the different feelings of his followers. But how such a power, which is in its origin personal, should descend by inheritance, without any reference to the personal qualities of the successor, is a question not so easy to explain. It is probable, however, that hereditary dominion has been introduced from the united operations of many causes, such as the feeling of gratitude, by which a part of the respect due to the father is paid to the son; the mutual jealousy of rival competitors; the support of adherents more interested in preserving than destroying the succession; and the experience of facts, which went to prove that any rule of succession is better than none, and that the one most easy and certain is that of consanguinity.

This account of the supposed origin of government is confirmed by what we know of the condition of some uncivilised parts of the world, and what we read of in the histories of earlier times; and both conspire to show that nations are formed of single families, each under its own head, and united only for purposes of mutual protection, but not possessing, because not wanting, a system of laws and government, that would

be perfectly useless to persons occupied with the care of subsistence merely, and free to seek it how and where they best could at nature's hands alone.

But if this be a correct view of the earlier stages of society, how shall we account for the existence in remote ages of great empires, and the rapidity with which they rose from a state of comparative nothingness? The fact is, that the formation of such extensive empires was facilitated by this very multitude of clans, unconnected with or hostile to each other; for when one tribe had by any means got the start of the rest, it could, as Rome in truth did, under the conduct of a skilful and daring chief, easily subdue by force, or gain by alliance, the weaker neighboring states, before they felt the necessity, or possessed the means, of confederating against the common foe.

With regard to the conclusion to be drawn from the preceding theory, it is fair to infer that the first form of civil government was a military monarchy, the result of an extended application to many clans of the principles which regulated single families, collected each under its own head.

CHAP. II. HOW SUBJECTION TO CIVIL GOVERNMENT IS OBTAINED.

There is nothing in the history of man more surprising than the phenomenon of the almost universal subjugation of strength to weakness, as shown in the fact of millions of robust men, in the full exercise of their personal faculties, waiting on the will of a child, a woman, or a fool. But though it be an extreme case to suppose a vast empire under the subjection of a person the weakest in intellect or most debased by vice; still, as in governments even the most popular, the physical strength resides in the many, it is difficult to understand how a moral strength should exist in the few powerful enough to control the many; nor is the difficulty solved by asserting that civil govern-

ments are upheld by standing armies; for the question still is, how are these armies themselves, the masters over the many, made to obey the commands of the ruling few?

The fact is, that such submission is not the result of one, but of many causes, each operating on different portions of the community, and thus producing a similarity of conduct from principles extremely various.

These principles are—1. prejudice;[1] 2. reason; 3. self-interest.

1. The prejudice, by which they who obey are influenced, is founded on prescription, which, in monarchies and aristocracies, operates in favor of particular persons; in democracies, of particular institutions; and, as the whole course of civil life is regulated by prescription, the prejudice must needs take a deep root. All the demands made by the privileged orders on the less fortunate part of society, rest, as many think, on prescription alone; and to that law, where demands are contested, is the appeal made. Hence, persons learn to transfer to the government the same prejudices in favor of prescription which they feel in the case of individuals, and consider that the sovereign has a right to the obedience which has been given him of old, and that in demanding it he only claims what is justly due.

In hereditary monarchies the prescriptive title is strengthened still further by the introduction of a feeling of sacredness attached to the persons of princes. Of this feeling all princes have been quick to take advantage; and by the assumption of titles, suited rather to the majesty of the Deity than to his self-called representatives on earth, and by the adop-

[1] By prejudice is here meant opinion, whether true or false, not founded on reason in the mind of the person who entertains it.

tion of the religious ceremonies of investiture and coronations they have increased both their actual power and ideal importance; and so well has the folly of man kept pace with the impiety of the prince, that an emperor has been worshipped as a present God; and even to this day, the Lama of Thibet is considered the immortal God himself, the object at once of civil obedience and religious adoration; a singular instance of the facility with which human credulity may be abused, and of the extent to which it can be carried, when the object is to produce a reverence for a king, by working on the religious principles of mankind.

II. They, who obey from reason, are determined by perceiving the necessity of some government, the mischief of civil commotions, and the difficulty of resettling what has been once disturbed.

III. He, who obeys from self-interest, is careless of the general consequences of resistance, but quite alive to the evils he would suffer by non-obedience in the diminution of his individual ease and comforts; or even, if disposed to resist, he is restrained by the fear of falling into a worse situation than his present one, when arrayed singly, and uncertain of support from others, against the powers that be.

From this account of the principles which lead men to obey civil governments at all, governors may learn,

1. That, as the physical strength resides in the governed, it is unwise to rouse a power, which, once excited, can overturn dominion the most deeply rooted; and that as authority is founded on public opinion, public opinion must be treated with respect, and managed with delicacy.

2. That, as government owes its support to the custom of persons thinking that might is right, every change of custom diminishes the stability of the opinion of its power; and hence slight evils ought to re-

main uncorrected for fear of disturbing antiquated prejudices; and even the charm, which the multitude feel in names, is not to be despised; a feeling, the knowlege of which led some of Cromwell's party to advise his assumption of the title and ensigns of royalty, with a view to satisfy those, who would otherwise be offended at the novel name of Protector; while a similar perception of the magic of a name led others to oppose the measure, through the fear that veneration paid to titles would endanger the liberty of the Commonwealth.

3. That the government may be too secure. Although the greatest tyrants have been those, whose titles were the least questioned, still, when they became too secure in the opinion of their rights, their power has received a check by a change in the succession; and thus, as at the Revolution, the lofty notions of hereditary right have been moderated on the part of the prince, and the people prevented from inviting servitude by undue compliances and dangerous concessions.

4. That as a want of communication amongst the disaffected is one of the principal preservatives of civil authority, every state ought to prevent its subjects from congregating in masses; because, as such bodies are influenced by a similarity of interests on questions of religion or polity, they are wont to offer the most desperate resistance to authority; since one and all feel, that, subjected equally to oppression, they can break it by united exertions alone. Hence, the danger of collecting men into large towns or crowded districts, as done for the purposes of trade in manufacturing countries, where the many soon learn the secret of their strength, and both feel and impart confidence by assurances of mutual support, while the propinquity of habitation and intercourse of employment enable the passions and counsels of the combined parties to circulate with ease and rapidity; and as

soon as the train is laid, it needs only a spark to produce an explosion.

CHAP. III. DUTY OF SUBMISSION TO CIVIL GOVERNMENT.

The last chapter touched on the motives which lead to civil obedience; the present relates to a different point, viz. the reasons which make that obedience a duty.

To prove civil obedience a moral duty, Locke and others have referred to a compact between the citizen and the state, which, like other compacts, is binding on the parties; and as the citizen has in such compact promised fidelity, he is morally bound to keep his promise. This compact is twofold.

1. Express, and entered into by the founders of the state, convened for the purpose of settling the terms of their political union; when the whole body agreed to be bound by the decisions of the majority, which either then, or subsequently, having formed itself into a standing legislature, deputed to one or more persons the power to make regulations, which all, according to the original compact, were bound to obey. This transaction is sometimes called the social compact; and the original resolutions compose what are called the fundamental laws of the constitution, which are appealed to as the ground for the prerogative of the crown, and the birth-right of the people.

2. Tacit, and adopted by all who succeeded the founders; and who, by accepting the protection of the society, virtually consented to abide by its laws, just as, at present, he who enters a club tacitly engages to conform to its rules, since he knows that he is admitted only on such terms.

But this account of the matter is false in fact; and, if it were true, it would not be admissible, as leading to dangerous conclusions.

No such compact was ever made; for it could not have been made, without supposing, what is impossible, that savages could deliberate on topics which civil life alone suggested. But though no government began from this original, some imitation of a social compact might have taken place at a revolution. In North America, for instance, the people did assemble to elect deputies for the express purpose of forming a constitution, and the deputies so elected did frame a government, invested with the power of making laws, binding on the very people by whom the legislature had been so elected. Yet even here much was presumed to be already settled: for even the qualifications of voters, and the mode of electing the representatives, were modelled after the older forms of government; and as that from which every social union should set off, and which alone makes the resolution of the society the act of the individual, viz. the willing consent of all to be bound by the decision of the majority, was wanting in America, the compulsory obedience of the minority became an act of oppression on the part of the majority, and at variance with the equity requisite for a civil union.

But, it is said, the existence of this original compact is merely assumed, with a view to explain the grounds of the relative duties of sovereigns and subjects. To this it is replied, that if the compact did not exist in reality, it can afford no foundation for real duties. But so far from this compact being considered as a fiction, it is constantly appealed to as a reality, whenever mention is made of the fundamental laws of the constitution, of the inherent rights of the prince or people, or of usages transcending the authority of the existing legislature; and the object of the appeal is to show, that as certain rules were established when the government was first settled, and as all subsequent assemblies derive their rights only from the primitive one, the former can in no wise

exceed the limits within which the latter was bounded; and that the primitive assembly differs from its successors in this alone, that the former bound itself to obey the government by an express stipulation, which, in the case of the latter, is tacitly confirmed by the performance of certain duties in return for the possession of certain privileges, and especially by the purchase or inheritance of lands to the enjoyment of which allegiance to the state is annexed, as the very service and condition of the tenure. But this argument crumbles under close examination.

1. For in all stipulations, expressed or implied, the parties concerned must not only possess the liberty of assent or refusal, but be conscious also of possessing such liberty. Now, so far from possessing this liberty either in fact or in idea, the subjects of modern states are not conscious even of the existence of any such stipulation with the government, by virtue of which they are free to choose whether they will or not be bound by the acts of the legislature; and while ignorant that a mutual promise of protection and obedience has been required and given, they do not, even for a moment, believe that the validity or authority of the law depends on their recognition or assent. Now, as no arguments can excuse or supply this defect of a consciousness of liberty, all suppositions built on such defective principles must be erroneous. Still less is it possible to reconcile with any idea of stipulation, the practice of founding allegiance on the accidental circumstances of birth, that is, of claiming as subjects those who are born within the dominions of a particular state; and, further, if the subject be bound only by the express stipulation of his progenitors, or his own tacit consent, as expressed by his act of residence in the country, how can we defend the right, which all states claim, of preventing their subjects from leaving the realm?

2. If the possession of land carry with it a tacit promise to obey the laws of the country, in return for the

security of possession, before this argument can be admitted as valid, it must be shown that the founders of that state had a right in the soil in perpetuity, and could dispose of it with or without conditions attached to the transfer. But as, by the law of nature, the right to the soil is founded only on temporary occupancy and culture, for the purposes of sustenance, no such state could even vote themselves owners in perpetuity of the lands, and still less transfer a right which they never possessed. Yet, on this original possession and transfer, is founded all the reasoning, which infers obedience from the possession of land.

But, in truth, the whole question about the social compact would merit little discussion, and less opposition, did it not lead to conclusions unfavorable to the happiness of society, by starting questions that ought not to be mooted, by perpetuating evils that ought to be removed, and by giving rise to constant changes of government.

1. For if a subsisting legislature derives all its authority only from inheriting certain powers possessed by the primitive convention, and if those powers be limited by certain resolutions, supposed to have been framed by such an assembly; as it is impossible to determine the number or nature of such supposititious fundamental points, not only will the deliberations of the legislature be embarrassed, but even its authority endangered by agitating such uncertain fundamentals of the constitution, as was done in the reign of Charles II., when the question was raised, whether an act of parliament could or not alter or limit the succession of the crown.

2. If the subject owes obedience by virtue of a compact, he is compelled to perform his part of the contract, however inconvenient he may find it to abide by the disagreeable forms of the established government; because, by the law of contracts, no one can retreat from an engagement on the ground of

the inconvenience of its performance; but if the social compact is not to follow the general law of contracts, it is an abuse of terms to call the relation between the state and subject by such a name, and a mere waste of time to reason on such misnomers, which can lead only to misunderstanding. It is true that such a compact will justify the subject in resisting any encroachments made or designed by the state on his liberty; but as he can have no right to resist the established form of the government, still less can he attempt to alter it without the assent of the governors; and as the governors are not likely to assent to any diminution of their power, he will be morally obliged to submit to the despot under whom he may be living, and who, in exacting the most rigorous servitude, still keeps within the terms of the agreement; beyond which when the state endeavors to step, the people may vindicate their rights by force; but to impose any new limitations on, and in opposition to, the reigning power, would be an infraction of the original compact.

3. If the duty of allegiance be founded on agreement, and if there be any analogy between the rules of the social compact and of contracts in general, every violation of such agreement on the part of the rulers would dissolve the government, precisely as other contracts are dissolved by a similar violation on one side. Now, as the terms of the original compact exist nowhere positively, they can only be inferred; and as different inferences may be drawn by different parties from the same undefined view of the prerogatives of the prince and of the rights of the people, both eventually will, in vindication of their respective claims, be guilty of aggressions, to be settled only by an appeal to arms; and thus the peace of society will be disturbed by the vindication of the plea, that a violation of the social compact justifies its dissolution. But though such a vindication proved

successful at the Revolution, the plea itself was captious and unsafe in a course, defensible on other and plainer principles.

Rejecting therefore the fiction or fact of a social compact, as unfounded in principle and dangerous in application, we assign, as the only ground for civil obedience, the will of God, as collected from expediency.

God wills the happiness of man.

Now, civil society conduces to that end.

But civil society requires that each member be bound to support the interest of the whole.

Hence, if the interest of the whole be supported by obeying the established form of government, it is the will of God that each person obey such established form, so long as the interest of the whole requires it, that is, so long as submission brings to the whole fewer evils than resistance would.

On this principle, unresisting submission and unjustifiable resistance are equally excluded.

But it will be asked, who is to judge when the resistance is justifiable? We answer, every man for himself: for in contentions between the rulers and ruled, the parties admit of no umpire; and the decision cannot be left to those, whose conduct has given rise to the question, and whose fate is too intimately concerned in the result. The danger of error and abuse is no objection to the rule of expediency; for, 1. every rule is equally liable to similar danger; and, 2. the application of this, as of other rules binding on the conscience, must depend on private judgment; in the exercise of which it matters not whether a man be influenced by his own reasons, or freely adopts those of another.

The advantage of thus substituting expediency in the place of compact, as the ground of civil obedience, will be best seen by considering,

1. That it will be as much a duty to resist at one

time as to submit at another, when the society will gain more by resistance than by submission.

2. That the right to resist does not depend on the grievance to be sustained or feared, but on the probable evils of resistance. Thus, at the Revolution, as the probability of mischief was very small, resistance was justifiable, which would not have been so, had the probability of mischief been very great.

3. That when the government is once settled, no plea, founded on the injustice of its formation, can warrant resistance to it. Of all civil contests, few have been so futile, and none so furious, as those respecting a disputed succession. The allegiance of the subject is due, not to the person, but the office of the ruler.

4. That not every stretch of prerogative, abuse of power, or neglect of duty on the part of the chief magistrate, or of one or both branches of the legislature, will justify resistance, unless the general consequences of the individual wrong are likely to be greater than the evils of disturbance. Still, all such acts, however trifling in appearance, must be opposed and punished even beyond their apparent insignificance, because such readiness to take alarm, on the part of the people, is the best security for the preservation of liberty, which is most surely undermined by encroachments, made without opposition, or opposed without effect.

5. That no law or custom will be so binding, that it need be continued when public benefit shall demand its discontinuance. The prerogative of the crown, the powers of the legislature, and the rights of the people are only parts of so many laws enacted for expediency, and to be abrogated, if requisite, for the public good. The falsely and foolishly called fundamental laws of the constitution have no place in our system; and all the respect due to such laws is founded, not on their an-

cient institution, but present worth; and the unwillingness to change them can fairly rest only on the mischief arising from frequent changes of government.

6. That as all civil obligation is resolved into expediency, the same act, done under two different forms of government, is not to be viewed in the same light; and the act of oppression that would justify resistance in a free country, would not justify it in another not free: for as the expediency of resistance depends on the probability of success, and as the probability of success in the latter country is less than in the former, the expediency of submission becomes greater in one case than in the other; and as it is expediency which constitutes the moral obligation to obey, the rights connected correlatively with such obligation must vary with the difference of expediency. Now, as the expediency of submission is not the same, so the rights cannot be the same. In this way alone the subjects of different states possess different civil rights; the duty of obedience is defined by different boundaries; and the point of resistance placed at different parts of the scale of suffering; nor is there any need to apply, as some have done, the principle of the social compact to explain the ground of such difference in civil rights, or the duty of submission.

7. That as the interest of the whole society is binding on every part of it, no individual can pursue his private advantage to the injury of the community, nor any portion of the empire concert measures for their own benefit to the detriment of the sum of public prosperity. In the contest between England and her revolted colonies, an American, to justify resistance, ought to have satisfied himself, not that the colonies would be benefited alone by their independence, but that America would gain more than England could lose by the separation; or, at any rate, that the whole gain to both countries would be greater by the

future freedom of the colonies, than the whole loss to both by their continued submission. The same principle of calculation, by which the balance of advantages and disadvantages is ascertained, may be applied to all similar cases; and the conclusion arrived at will be, that in a competition of interests between a small colony and the mother country, the less must be sacrificed to the greater; but in proportion as the dependency increases its power, it has a right, founded on expediency, to have its interests viewed differently, and to claim terms of confederation equal to its importance in the general scale, and, if refused, to assert its independence.

CHAP. IV. DUTY OF CIVIL OBEDIENCE, AS STATED IN THE CHRISTIAN SCRIPTURES.

As regards the extent of our civil rights and obligations, Christianity leaves man where it found him; and the only passages of the New Testament connected with this subject are in the Epistles of St. Paul and St. Peter.

'Let every soul be subject unto the higher powers: for there is no power but of God; the powers that be are ordained of God. Whosoever, therefore, resisteth the power, resisteth the ordinance of God; and they that resist, shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same; for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath on him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For, for this cause pay ye tribute also: for they are God's ministers, attending continually on this very thing. Render therefore to all their

dues ; tribute to whom tribute is due, custom to whom custom, fear to whom fear, honor to whom honor.'[1]

'Submit yourselves to every ordinance of man, for the Lord's sake ; whether it be to the king, as supreme ; or unto governors, as unto them that are sent by him for the punishment of evil-doers, and for the praise of them that do well. For so is the will of God, that with well-doing ye may put to silence the ignorance of foolish men ; as free, and not using your liberty for a cloak of maliciousness, but as the servants of God.'[2]

These passages have been usually adduced as proofs of the language of Scripture in favor of unlimited passive obedience. But before such an interpretation can be admitted, fatal to the principles here advocated, it is necessary to examine the subject more at length, and to show, 1. that as the circumstances, which probably gave rise to such language, were of a temporary nature, the doctrine there inculcated is not to be considered of universal application ; and, 2. granting the supposed circumstances to have had no influence on the doctrine, that the words in question only enjoin the religious duty of obedience, but do not define, politically speaking, the extent of it.

1. The first Christians, it is said, privately cherished an opinion, that their conversion to Christianity entitled them to an exemption from the civil authority of the Roman power. To refute this error, St. Paul teaches the Christian convert to obey the magistrate 'for the Lord's sake;'—'not only for wrath, but for conscience sake;'—'that there is no power but of God:' that the powers in possession of the actual and necessary authority of civil government, 'are ordained of God,' and, consequently, entitled to receive obedience from those who profess themselves the

[1] Rom. xii. 1—7. [2] 1 Pet. ii. 13—18.

peculiar servants of God. St. Peter, likewise, briefly describing the office of 'civil governors, the punishment of evil doers, and the praise of them that do well,' justly infers, from the use of government, the duty of subjection; which, extensive as the reason on which it is founded, belongs to Christians, no less than to the heathen members of the community. If, then, the two apostles wrote with a view to this particular question, their words cannot fairly be transferred to a question totally different; nor can the arguments used in teaching a primitive convert, who disputed the jurisdiction of the Roman government over a disciple of Christianity, be applied to him, who, acknowleging the general authority of the state over all its subjects, doubts whether that authority be not, in some important branch of it, so ill constituted or abused, as to warrant the endeavors of the people to bring about a reformation by force. It is true, that neither the Scriptures, nor any history of the early ages of the church, furnish direct proof of the existence of such disaffected sentiments amongst the primitive converts. They, however, supply some circumstances, which render probable the opinion, that extravagant notions of the political rights of Christians were entertained by many early proselytes to the religion. From the question proposed to Christ, 'Is it lawful to give tribute unto Cæsar?' it may be presumed, that doubts had been started by the Jews concerning the lawfulness of submission to the Roman yoke; and the accounts delivered by Josephus, of various insurrections of the Jews, excited on this pretence, confirm this presumption. Now, as the Christians were at first chiefly taken from the Jews, it is not to be wondered at, that a tenet, so flattering to the self-importance of those who embraced it, should have been communicated to the new institution. Again, the teachers of Christianity, amongst the privileges which their religion conferred on its

professors, were wont to extol the 'liberty, in which Christ had made them free.' This liberty, by which was merely intended a deliverance from the dominion of sinful passions, the superstition of the Gentile idolatry, and the encumbered ritual of the Jewish dispensation, might by some be interpreted to signify an emancipation from all restraint, imposed by human authority merely. At least, they might be represented by their enemies as maintaining notions of this dangerous tendency. To some error or calumny of this kind, the words of St. Peter seem to allude:— 'For so is the will of God, that with well-doing ye may put to silence the ignorance of foolish men: as free, and not using your liberty for a cloak of maliciousness (that is, sedition), but as the servants of God.'

11. But should this interpretation appear to be too feebly supported by the testimony of facts, still the words themselves will be found to inculcate rather the duty of obedience than to describe the extent of it: for while they enforce the obligation by the proper sanctions of Christianity, they neither enlarge nor contract the limits by which it is bounded. In like manner, the same apostles enjoin servants to be subject to their masters, children to obey their parents in all things, and wives to submit themselves unto their husbands; yet no one doubts that the commands of masters, parents, and husbands, are often so immoderate, unjust, and inconsistent with other obligations, that they both may and ought to be resisted.

Hence, we are at liberty to infer, that if unlimited passive obedience leads, as it could not fail to do, to the imposition of commands equally immoderate and inconsistent with other obligations, a similar resistance would be justifiable on the part of a people exposed to such commands.

After so full an account of what seems to be the

general design and doctrine of these much-agitated passages, little need be added in explanation of particular clauses. St. Paul has said, ‘ Whosoever resisteth the power, resisteth the ordinance of God.’ This has been considered as an authority for the most superstitious views of the regal character. But surely truth has been sacrificed to adulation; for, 1. the expression is just as applicable to the elective magistrates of a pure republic as to an absolute hereditary monarch; and, 2. it is not the supreme magistrate individually, but the officer, be he high or low, to whom obedience is due. The divine right of kings is, like the divine right of constables, a right ratified by the Divine approbation, so long as obedience to their authority appears to be conducive to the common welfare. Princes are ordained of God only so far as his will sanctions every law of society which promotes the happiness of man; and thus, without any repugnancy to the words of St. Paul, they are by St. Peter denominated the ‘ ordinance of man.’

CHAP. V. CIVIL LIBERTY.

Civil liberty is the not being restrained by any law, but what conduces in a greater degree to the public welfare.

To do what we will is natural liberty; to do what we will, consistently with the interests of the community, is civil liberty, and the only liberty desirable in civil society.

To do what one likes is certainly pleasant; but if all could indulge in this pleasure, (and if one may, all may) the liberty of each person would receive so many checks from the liberty of others, that the liberty of all would lead to the liberty of none.

The boasted liberty of a state of nature is found only in solitude: in a state of society the liberty of each is increased by the restraint thrown on all; because each gains more from the limitation of the free-

dom of others, than he loses from the dimunition of his own. Natural liberty is like the right of common on a waste; civil liberty is like the right of the enjoyment of an enclosure.

Since, then, the greater happiness of the many is the only ground for restraining the liberty of the individual, and as restraint is a positive evil; it will be necessary for the legislature, before it inflicts the evil, to show that the private evil will be outweighed by some public good; for, if no such good is likely to result, the restraint ought not to be imposed; or, if imposed, it ought immediately to be withdrawn, as soon as it is found that no actual good has been the result; nor is it necessary for the subject to prove that evil has actually resulted from it. This principle might be adopted with effect in a revision of many of the laws of England, especially those relating to game, the poor, the Papists, and dissenters;[1] and amongst a people jealous to excess of their liberty, it seems strange that this principle should have been so imperfectly attended to.

Since, then, the amount of actual liberty thus varies inversely, as the number and severity of restrictions, either useless or partially useful, it follows, that every people possesses some, no people perfect liberty; and that, as it may be enjoyed under every form of government, and is never entirely lost under any, all those phrases about a free people, or a nation of slaves, are intelligible only when taken in a comparative sense.

Hence, also, we are enabled to apprehend the distinction between personal and civil liberty. A citizen of the freest republic in the world may be imprisoned for his crimes; and, though his personal freedom be restrained by bolts and fetters, so long as his confinement is the effect of a beneficial public law, his civil

[1] The laws, to which Paley alludes here, have been almost all repealed.

liberty is not invaded. If, then, the coercion of a prison be compatible with a state of civil freedom, it cannot be less compatible with those more moderate constraints, which government imposes on the will of the individual. It is not the rigor, but the inexpediency, of laws, which makes the execution of them tyrannical.

There is another idea of civil liberty, which, neither so simple nor so accurate as the former, agrees better with the common signification affixed to the term. This idea makes liberty to consist in, not merely an actual exemption from the constraint of useless and noxious laws, but in the security from the danger of having such hereafter imposed or exercised. Thus, Sweden is said to have lost her liberty by the revolution which took place in that country, although the people continue to be governed by the same laws as before, or by others which are wiser, milder, and more equitable. But, as they have lost the power and functions of the diet, and the constitution of their states and orders, whose concurrence was required in the formation of every law, they have parted with the security which they possessed against the power and prerogative of the crown; and in the loss of this security consists the loss of liberty. They have changed, not their laws, but legislature; not their enjoyment, but safety; not present burdens, but the prospect of future grievances; and have thus become, instead of freemen, slaves. So in England, the act of parliament, in the reign of Henry VIII., which gave to the king's proclamation the force of law, has properly been called a complete surrender of the liberty of the nation; and would have been equally so, even if no proclamation had been issued in pursuance of these new powers. The security was gone. Were it probable that the interests of the people would be as studiously consulted by a despotic prince as by a popu-

lar assembly, absolute despotism would be as free as the purest democracy.

Various as appear to be the definitions given of civil liberty, yet do they in fact all agree; for, as they all relate only to the different guards by which civil liberty is to be protected, they only present different views of an object really one and the same.

Thus, liberty is defined by one writer to consist in the right of the subject to be governed by no laws but those he has actually or virtually assented to; another places liberty in the separation of the legislative and executive powers of the state; a third, in being governed by laws, known, positive, and inflexible; a fourth, in taxation and representation being co-existent; a fifth, in the freedom and purity of election; and a sixth, in the control of the people over the military.

To these, however, and similar definitions, it may fairly be objected, that they do not so much define civil liberty, as describe the preservatives of it. But though truth cannot be destroyed by an incorrect definition, propriety may be offended at it: hence, those definitions ought to be rejected, which, making what is unattainable in reality essential to the idea of civil freedom, gives rise to expectations that cannot be gratified, and to complaints that no government can remove. That state is, in fact, the most free, where the best provision is made for the ready enactment of salutary laws.

CHAP. VI. DIFFERENT FORMS OF GOVERNMENT.

As a series of appeals must be finite, there must exist in every government a power, from which there is no appeal; and which, so far, may be termed absolute, arbitrary, and despotic.

The person, or assembly, in whom this power resides, is called the sovereign, or the supreme power of

the state; and which, from its power to make laws, is called also the legislature of the state.

A government receives its denomination from the form of the legislature.

Political writers enumerate three principal forms of government, of which, taken singly, or in combination, all governments are composed. These forms are,

1. Despotism, or absolute monarchy, where the legislature is in a single person.

2. An aristocracy, where the legislature is in a select assembly, the members of which either fill up by election the vacancies in their own body, or succeed to their places in it by inheritance, tenure of certain lands, or in respect of some official right or qualification.

3. A republic, or democracy, where the people at large, either collectively or by representation, constitute the legislature.

The advantages of monarchy are, decision, secrecy, and despatch, and the military strength which results from these qualities; the preventing, by a known rule of succession, all competition among the higher orders for the supreme power; and the ready suppression of movements arising from popular excitement.

The mischiefs, or rather the dangers, of monarchy, are, tyranny, expense, exaction, military domination; unnecessary wars, waged to gratify the passions of an individual; risk of the character of the reigning prince; ignorance in the governors of the interests of the people; a deficiency of salutary regulations; and insecurity of person and property.

The separate advantage of an aristocracy consists in the experience which a permanent council is expected to possess, and in the advantages of an education, directed with a view to the stations, which the heirs of the existing members are destined by their birth to occupy.

The mischiefs of an aristocracy are in the dissen-

sions of the rulers, who, from the want of a common superior, are kept under no control; in the oppression of the lower orders by the privileges of the higher; and by laws made for the interest of the law-makers alone.

The advantages of a republic are, liberty, or exemption from needless restrictions; equal laws; regulations adapted to the circumstances of the people; frugality; aversion to war; and the opportunities afforded to all men of bringing their abilities into notice for the service of the commonwealth.

The evils of a republic are, tumults, through the attempts of powerful citizens to gain the lead; the difficulty of propounding questions of state to the discussion of the people; the disclosure of public counsels, and the delay of designs, retarded by the necessity of obtaining the consent of numbers.

A mixed government is composed of two or more of the simple forms of government; and according as each form enters into the constitution of such mixed government, the evils of such form are to be expected.

But though a mixed form partakes of the evils of each of the simpler forms, it likewise enjoys the benefits common to all. Hence, in its regal part it possesses, for instance, the secrecy and despatch of a monarchy; and in its popular part the frugality and aversion to war of a democracy. It is, however, exposed to an evil, from which the others are free; the corruption of principle, which is sure to insinuate itself into a constitution that divides the supreme power between an executive magistrate and a popular council.

An hereditary monarchy is universally to be preferred to an elective one, as shown by the experience of past and present ages. A crown is too splendid a prize to be conferred on merit; where the passions or interests of the electors exclude all consideration of the qualities of the competitors. Nothing is gained by a popular choice, worth the tumults which

inseparably attend the election of a king. Add to this, that a king who owes his elevation to the event of a contest, will be apt to regard one part of his subjects as friends, and the other as foes. Besides, as plans of national reform are seldom brought to maturity in a single reign, a nation cannot attain the prosperity of which it is capable, unless such plans be continued through a succession of reigns. Now, as the probability of such continuance is greater where each prince succeeds to the pursuits and system of his ancestor, than if the crown, at every change, devolves on a stranger, whose first care will commonly be to pull down what his predecessor had built up; the probability of such national improvement is increased, and the advantages of an hereditary monarchy are more fully felt.

Aristocracies are of two kinds: 1. where the nobility, possessing power in their collective capacity alone, enjoy individually no authority or privilege beyond the rest of the community; as in the case of Venice: 2. where the nobles are severally invested with great personal power and immunities, and where the power of the senate is little more than the aggregated power of the individuals who compose it; as in the case of Poland. Of these two forms of government, the first is more tolerable than the last: for, though the members of a senate should be profligate enough, individually, to abuse the authority of their stations in the prosecution of private designs, yet, as all have not the same end to gain, it would be difficult to obtain the consent of a majority to any act of individual oppression: or if the will were the same, the power is more confined; for whether the tyranny reside in a single person or a senate, the oppression of one cannot be exercised so well at many places, and at the same time, as it may be carried on, where a numerous nobility lord it over their respective vassals

and dependents. Of all species of tyranny, this is the most odious: by it private life is more harassed than by the most vexatious laws, or even by the will of an arbitrary monarch, from whose injustice the greatest part of his subjects are sheltered by their obscurity.

Europe exhibits more than one example, where the people, provoked by the exactions of the nobles, have joined with the prince in the overthrow of the aristocracy, deliberately preferring the despotism of one to that of many. About the middle of the 17th century, the commons of Denmark, weary of the continued oppressions, and exasperated by the recent insults of the nobility, formally offered unlimited power to the king. The revolution in Sweden was brought about with the acquiescence, if not assistance, of the people, from the prospect it afforded of deliverance from the old tyranny of their nobles. In England, the people beheld the depression of the barons, under the house of Tudor, with satisfaction, although they saw the crown acquire thereby a power, which the then constitution was not likely to limit. The lesson taught by such events is, that a mixed government, which admits of a patrician order, ought to circumscribe the privileges of the nobility, if it wishes its own preservation: for nothing so alienates the minds of the people, or prepares them for the practices of an enterprising prince or a factious demagogue, as the perception of abuses resulting from the existence of partial privileges.

Amongst the inferior, but not inconsiderable advantages of a democracy, or of a constitution where the people share in the legislation, the following should be reckoned:—

1. The direction which it gives to the education and pursuits of the superior orders of the community. The share which this has in forming the national character is very important. In countries where the

gentry are excluded from all concern in the government, the only road to advancement is the profession of arms. But miserable as that country must be, which constantly employs in military service a great proportion of any order of its subjects, the individuals of the profession are not less so; who, from the want of higher objects, fall into habits of animal gratification, or devote themselves to the futile business and decorations of a court. But, where the effective portion of civil power is possessed by a popular assembly, more serious pursuits, with purer morals and a more intellectual character, will engage the public esteem; faculties which qualify men for deliberation, and are the fruits of sober habits and continued application, will be excited by the most spirit-stirring of inducements, the desire of political importance.

2. Popular elections procure to the common people courtesy from their superiors. The contemptuous and overbearing insolence of the higher orders is greatly mitigated, where the people have something to give; and the assiduity with which their favor is then sought, generates habits of condescension and respect; and as life is more embittered by affronts than injuries, whatever tends to procure civility, and to lessen the evils of inequality, deserves to be accounted among the most generous institutions of social life.

3. The satisfaction which the people in free governments derive from the knowlege and discussion of public measures. Such subjects excite just enough of interest to afford a moderate engagement to the thoughts, without rising to any painful degree of anxiety; and thus reach the end and aim of all amusements, which do not discompose the business of life: and as they excite universal curiosity, and are such as almost every man wishes to deliver his opinion about, they greatly promote, and even improve conversation, by supplying a substitute for amusements less innocent. Now, though the jealousy of

despotic governments excludes all this, the loss, you say, is trifling, except to village politicians: but nothing is a trifle, which ministers to the harmless gratification of the multitude.

It has been said that a republic is suited only to a small state; for unless all the people of a large empire share in the representation, the government is not to them a republic; that elections, where the constituents are numerous and widely dispersed, are managed by a few, situated near the place of election; because each voter, considering his single suffrage too unimportant, cares not to oppose the influence of such few; that if the representation be contracted enough to admit of orderly debate, the interest of the constituent becomes too little, of the representative too great; that it is difficult to maintain any connexion between them; that he who represents 20,000 is necessarily a stranger to the great body of his electors; and that when a representative, so unknown to his constituents, finds the treasures and honors of the state at the disposal of a few, and himself one of the few, he will scarcely prefer his public duty to personal aggrandisement, which the value of his vote will always purchase; and, lastly, as all appeal to the people is precluded by their want of unanimity, the divisions and combinations of the representatives will be equally dangerous. But much of the weight of these objections is taken off by the contrivance of a federal republic; which, leaving to each smaller state its internal legislation, reserves to a convention of all the united states the adjustment of individual claims, together with the possession of the plenary powers usually granted to other governments, on points connected with the welfare of the whole community, in their domestic and foreign relations. How far such a constitution is able to unite the liberty of a small with the safety of a large empire; or whether, amongst coordinate powers, dissensions are not likely to arise,

which, for want of a common superior, will proceed to fatal extremities, are questions on which the records of the past are silent, to be decided hereafter by the history of America, where the experiment is now under trial on a large scale.

CHAP. VII. THE BRITISH CONSTITUTION.

By the constitution of a country, is meant so much of its law as relates to the form, rights, and functions of the legislative body, and of the courts of justice. Hence, the terms 'constitutional' or 'unconstitutional' mean only 'legal' or 'illegal.'

In England, the system of jurisprudence is made up of acts of parliament, decisions of the courts of law, and immemorial usage; and to these principles all appeal is made, when a doubt on a constitutional question is to be decided. This definition is the more necessary to be stated, as some persons, confounding what is constitutional with what is expedient, have pronounced a measure to be unconstitutional which they deemed to be inexpedient: while others ascribe a certain mysterious sanctity to the constitution, as if it were founded on a higher original than that which gives force to the laws of the realm. An act of parliament can, strictly speaking, never be unconstitutional; although it may militate against the spirit, contradict the analogy, or defeat the provision of other laws. Even that flagitious act in the time of Henry VIII., which gave to the king's proclamation the authority of law, was unconstitutional only in the latter sense.

Many persons are wont to speak of the 'first principles' and 'primitive model' of the British constitution; but such language is founded on very erroneous opinions. At no period did such principles and primitive model exist. During the time of the Commonwealth many attempts were made to frame a constitution for a future government, to be, like the supposed

social compact, received and established by common consent; but none of those attempts were carried into execution. Magna Charta and the Bill of Rights were wise and successful efforts to obtain security against the abuses of regal power; but these were merely partial modifications of an old, not an original formation of a new constitution, which has in fact grown out of emergencies, occasioned by the contentions of different parties, and the fluctuating policy of different times, and resembles an old mansion, which, from the variety of its architecture, shows the various periods when additions or alterations were from time to time made, to suit the varying taste and uses of its successive proprietors; and which, though wanting the beauty of external symmetry, still possesses internally all that is requisite for the accommodation of its inhabitants.

In the British, as in other constitutions, practice and theory do not always coincide. In theory the king is invested with personal impunity, with the power of rejecting laws agreed to by both estates of the realm, of creating peers, and of increasing the number of electors, by giving to any place, and to any set of persons, the charter of a corporation. This in appearance is only circuitous despotism; but in reality these formidable prerogatives dwindle into insignificance; while, in their place, a sure and commanding influence, of which the constitution knows nothing, grows out of the enormous patronage, which the increase of the empire places at the disposal of the crown and its servants.

In questions of reform the present constitution is not to be compared with models of ideal perfection; but the chance of obtaining another actually better is to be solely considered: and the result of such reflection will be, on the one hand, neither the blindness that sees no fault, nor the cowardice that will risk no change; and, on the other hand, neither the

sensibility which smarts under every petty annoyance, nor the rashness which disregards all the cost of a reform. Political innovations produce many beyond the intended effects. The direct consequence is often the least important; and incidental evil or advantage frequently exceed the good designed or the mischief foreseen. It is from the silent operation of causes set at work for different purposes, that the greatest revolutions take their rise. When trade was first encouraged by many wise laws, it was not seen that increase of wealth would engender a strength, that would not brook, under the forms of freedom, the arbitrary power of the king. When it was debated whether the mutiny act should be temporary or perpetual, little else probably occurred to the advocates of an annual bill than the expediency of retaining a control over the most dangerous prerogative of the crown,—the command of a standing army; whereas this single reservation has greatly altered the frame of the constitution: for since, by the changes of internal and external policy, a standing army has become essential to the safety of the empire, parliament, by discontinuing this necessary provision, can so enforce its resolutions on any other point, as to render the king's dissent to a law passed by both houses an experiment too dangerous, from the fear of producing a dissolution of the government. Lastly, when the constitution conferred on the crown the nomination to all public employments, the propriety of the step was obvious, as it left to a master the choice of his servants, and thus avoided the inconvenience, at each vacancy, of personal competition for places of honor and emolument. But it was not seen that this arrangement gave an influence to the crown, which, as employments increased in number and value, would change the character of the constitution; nor did they know, what experience has since taught, that patronage is power; that he who possesses the means of

gratifying man with wealth and honors, will, however his power may seem to be limited, direct public affairs; and whatever may be the mechanism of the political engine, he will guide its motion.

Since, then, the most important and permanent effects have been incidental and unforeseen, we ought to be cautious not to risk a change without a comprehensive view of consequences immediate and remote. The courage of a statesman should resemble that of a commander, who, however regardless of personal danger, never forgets that with his own he commits the lives of others; a hazard not to be staked on the uncertain success of a desperate enterprise.

The end of good government is the happiness of its subjects; the end of all governments, good or bad, is self-preservation. Hence, as a constitution would be defective that did not provide for its permanency, whatever provisions are made for such permanency are considered excusable in law. Yet, in fact, the provisions are excusable only till the constitution can be exchanged for a better. Hence, though many things are to be defended from their tendency to preserve a government, still this principle of preservation is subordinate to the consideration, whether the constitution is worth preserving.

The government of England combines a monarchy in the person of the king, with an aristocracy residing in the House of Lords, united to a democracy represented by the House of Commons; and the intention of such a scheme is to enjoy the good and avoid the evil of each of the three simple forms of government. How far this purpose is attained or attainable, will be best seen by a comparison of the good and evil of such simple forms as already detailed, and by an application of the facts there stated to the political condition of this country. It is enough for us to enumerate the expedients by which the British constitution provides,

I. For the interests of its subjects; and, II. for its own preservation.

I. To arrive at the first of these ends, as far as depends on legislation, every male member of the state, of sane mind, and not a minor, is capable of being a member of the senate; and every senator possesses the right to propose whatever law he pleases.

Every district of the empire chooses its representatives, informed of its interests, and enabled to communicate that information to the national council; and thus the meanest subject has some one on whom he can call, to bring his complaints into public notice.

By annexing to the right of voting for members of the House of Commons different qualifications in different places, each order and profession become not only virtually represented, but can, with the exception of the clergy, obtain in their own persons seats in parliament; and, while the elections are so connected with the influence of landed property, that a large number of men of great estates must be returned, they are also so modified by other influence, that men the most eminent and successful in their respective stations are the most likely to prevail in contests for seats.

The number and quality of the members, the variety of their interests, the uncertain duration of their power, and the change of men which every new election produces, are so many securities, both against the subjection of their judgments to any external dictation, and to the formation of a junto in their own body sufficiently powerful to govern their votes.

The representatives are so intermixed with the constituents, and the constituents with the rest of the people, that they can scarcely impose any burden on the subject, in which they do not share themselves; or adopt a regulation advantageous to others, in which they will not participate.

The proceedings and debates of parliament, and the

conduct of each representative, are known to the people at large, [by a violation of the law, which the houses of parliament themselves connive at.]

The representative is so far dependent on public favor, that he cannot better recommend himself to advancement in the state than by contriving and patronising laws of public utility.

When a knowlege of the condition of the people is thus collected from every quarter, and the intellects of so many are set at work on the subject, the most eligible expedients to increase the well-being of the state can scarcely fail to occur to some member, and, when once suggested to an assembly like the House of Commons, will, first or last, receive the approbation of a majority.

To prevent all contests for the supreme power, arising from the want of a known rule of succession, and to obtain the advantages of a monarchy in decision, secrecy, and despatch, the executive government is entrusted to an hereditary king; and as the inclinations of the king and of the people usually coincide in the maintenance of the interests of the empire at home and its dignity abroad, through the intervention of treaties of peace and declarations of war, and in the provisions for the administration of municipal justice, by the choice of proper magistrates,—the regal office is properly entrusted on those points with powers the most ample.

The principal dangers from a monarchy spring from taxation and punishment. But as, in every form of government, from which the people are excluded, the governors are interested to get as much, and the governed to give as little as they can; and as the power of punishment, in the hands of an arbitrary prince, becomes frequently an engine of oppression; the British constitution has wisely guarded the safety of the people in these two points by the most studious precautions.

1. As regards taxation, every law, by which money is to be levied on the subject, must be first proposed and passed in the House of Commons; and thus the imposition of taxes is exclusively reserved to the popular part of the constitution, where, it is presumed, the representatives will not tax themselves nor their fellow-subjects, without being first convinced of the necessity of the supplies they grant; and as the necessity of new grants cannot be seen without a knowlege of the application of previous grants, an account of the whole revenue and expenditure of the past year, together with a calculation of the income and charges of the year to come, are submitted annually to the House of Commons.

2. In the infliction of punishment, the power of the crown is confined by limits the most precise: for the guilt of the offender must be pronounced by a jury of twelve men of his own order, chosen out of the county where the offence was committed; while the extent of the punishment affixed to the crime is regulated by laws, which know not the person of the criminal.

To guard, further, the subject against the worst species of tyranny, arbitrary and clandestine confinement, the constitution has introduced the writ of Habeas Corpus; by virtue of which, on complaint in writing by, or on behalf of, any person in confinement, to any of the four courts of Westminster-Hall, in term time, or to the lord chancellor, or one of the judges, in the vacation, and on a probable reason being shown to question the legality of the detention, a writ is issued to the person in whose custody the complainant is alleged to be, commanding him, within a certain limited and short time, to produce the body of the prisoner, and the authority under which he is detained: and, on the return of the writ, strict and instantaneous obedience to which is enforced by very severe penalties, if no lawful cause of imprisonment

appear, the court or judge, before whom the prisoner is brought, is authorised and bound to discharge him; even though he may have been committed by a secretary of state, or other high officer, by the privy council, or by the king in person: so that no subject of this realm can be held in confinement by any power, or under any pretence whatever, provided he can find means to convey his complaint to one of the four courts of Westminster-Hall, or, during their recess, to any of the judges of the same, unless all these several tribunals agree in determining his imprisonment to be legal; and as he may make application to them in succession, if one be found who thinks the prisoner entitled to his liberty, that one possesses authority to restore it to him.

Hence, too, as treason is a charge in which the government is deeply interested to procure a conviction, the law, sensible of the unequal contest in which the subject is engaged, has thrown round the accused a triple shield: for by two statutes, enacted since the Revolution, every person indicted for high treason must have a copy of his indictment, a list of the witnesses to be produced, and of the jury impanelled, delivered to him ten days before the trial, and is further permitted to make his defence by counsel; privileges not allowed to the prisoner on other occasions: and, what is most important, two witnesses, at least, are required to convict a person of treason, while one positive witness is sufficient in other accusations.

II. We are now to inquire about the second end of civil government, the preservation of the constitution, and to show how each part of the legislature is secured in the exercise of its own powers from the encroachments of the others.

This end is obtained by what is called the balance of the constitution; by which is meant, that no part possesses a power, whose abuse is not checked by the

power of some other part. Thus the power of the two houses is checked by the king's negative; so that if laws, subversive of regal government, obtain the consent of parliament, the king by his negative can preserve the rights of his station. On the other hand, the arbitrary application of the king's negative is checked by the power of parliament to refuse the supplies. The maxim, 'that the king can do no wrong,' is balanced by another, 'that the illegal commands of the king do not justify those who assent to, or assist in, carrying them into execution;' and by a second rule, 'that the acts of the crown acquire no force, until authenticated by the subscription of some great officers of state.' By this wise contrivance, while the personal immunity of the king is preserved, the desire, which such impunity might encourage, to exercise wanton power, is checked effectually; for as the pleasure of the crown must be attested by certain officers of state, if the orders be illegal, the concurrence of such officers subjects them to prosecution and punishment; nor can they plead the command of the king to justify their obedience.[1]

Again, the power of the king to declare war, and to wield the military force, is checked by the privilege of the Commons to withhold the supplies. Further, the king's choice of his ministers is controlled by his obligation to appoint men to office, who are able to arrange the affairs of government with the parliament; a necessity which has so subdued favoritism, that men have been actually promoted by the king to the high-

[1] Among the checks which parliament holds over the administration, I forbear to mention the power of addressing the king, to know by whose advice he resolved on a particular measure, and of its punishing the authors of that advice; not because such a step is unconstitutional, but because it is useless: for if the king refuse the information requested, or take the responsibility on himself, all further proceedings, founded on this mode of application, are put an end to.

est offices, although distinguished by their opposition to his personal inclinations.

Another contrivance, which gives efficacy to the balance of power, is the balance of interest; by which is meant, that the interests of the three estates of the empire are so disposed, that, whenever one attempts an encroachment, the other two unite in resisting it. Should the king endeavor to extend his power, by contracting the privileges of the Commons, the House of Lords would see their own dignity endangered by every such attempt: for, as arbitrary power is no less formidable to the aristocracy than fatal to the people, the nobility would thus sink from their place in the national councils to the condition of puppets in the pageantry of a court. On the other hand, if the Commons should trench on the prerogatives of the crown, the House of Lords would be instantly alarmed by such stretch of popular power; and in every contest, where the king may be engaged with the Commons in defence of his rights, he will find a sure ally in the aristocracy. An attachment to the monarchy, to which they owe their existence; the allurements of a court in which they move; their hatred of all levelling pretensions; in short, every personal feeling, by which human conduct is regulated, will determine them to side with the crown. Lastly, should the aristocracy attempt to revive the privileges enjoyed in feudal times, the king and people would remember how the one had been insulted, and the other enslaved, by barbarous barons, and would lay aside their natural hostility, when threatened with a tyranny equally galling to both.

In thus describing the constitution, little notice has been taken of the House of Lords; whose proper use is, 1. to enable the king to reward by a peerage the servants of the public, in a manner most grateful to them, and at a small expense to the nation; 2. to secure the stability of regal government, by an order

of men allied to its interests; and, 3. to stem the progress of popular fury. For, as large bodies of men are subject to sudden frensies, and as opinions, circulated amongst a multitude without examination, and, acquiring force merely by repetition from one to another, may violently agitate a country; and, as the best way to stop the fermentation is to separate the mass into different orders and with separate interests; an hereditary nobility, invested with a share of legislation, may become useful to the state in preventing the ill effects of popular agitations; for, averse to the prejudices, and despising the clamor of the people, they will disdain to adopt the opinions of the lower orders, and readily reject the foolish or violent resolutions of the mob. Did the people always reflect, or were they tolerably steadfast in their judgment, the interference of a superior order would be not only superfluous, but wrong; for, after all allowance is made for superior education, that resolution is most likely to be right, which appears to be so to the majority of the nation; at least, that is right for them, which is consonant to their fixed sentiments. But when the opinion of the public is often only the opinion of its leaders; when the numbers who join in the cry, only serve to swell the sound, without any accession of judgment; and when we see the wisest counsels borne down by popular clamor; occasions may arise, where the state may be saved by the reluctance of the nobility to yield to the voice of the people. Whether, in such cases, the nobility be more unprejudiced than the mob, is not the question; it is enough if their prejudices be able to prevent mischief to the state.

If the personal privileges of the peerage, which are so many injuries to the rest of the people, be restrained, little inconvenience would be felt from their increased number: indeed, such division of power amongst more hands, is rather favorable to public freedom than otherwise.

The admission of a few ecclesiastics into the upper house, is but a fair compensation for their exclusion from the lower. Although the clergy are considerable by their number, property, and influence, yet, while every other profession has its representatives, able to state, and willing to support its rights, the clergy are deprived of an advantage, which is thus made up to them by introducing bishops into the House of Lords; and if, from gratitude or expectation, they are more obsequious to the ministers than are the possessors of other property, they are properly placed where much resistance to government is not expected.

No sufficient reason has yet been given for exempting the members of either house from arrest for debt. A single senator (especially one who, in the management of his own affairs, is guilty of imprudence or dishonesty) can seldom be so necessary in the councils of the nation, as to justify a departure from the laws made in a commercial state to punish insolvency: but, whatever reason may be pleaded for such immunity, the privilege of parliament cannot be extended beyond the person without an absurd sacrifice of equal justice to imaginary dignity.

There is nothing in the British constitution so remarkable as the inequality of the representation. The House of Commons consists of 558[1] members, of whom 300 are elected by 7,000 constituents; so that a majority of these 7,000 may decide a question against the opinion of 7,000,000 of people.[2] Besides, in scarcely any two parts of the country is the value of a vote the same; for in one county a single vote is one out of 10,000, in another one out of 1,000, and in some towns it is one out of 20; each of which bodies are to

[1] This number has been subsequently increased by the admission of 100 Irish members.

[2] Since the period when Paley first wrote, the population of Great Britain, it appears, has amounted to nearly 14 millions.

choose two members. Again, a vote is obtained in one place by birth, in another by dwelling in it, and in a third by serving an apprenticeship there; while other places are totally excluded from all share in the power to return members to parliament; and this, too, without the shadow of a reason for such difference between places represented or not: and, to complete this tissue of absurdity, while one half are elected by the people, the other half obtain their seats by purchase, or as the nominees of peers or commoners of large landed property.

This flagrant incongruity in the constitution strikes most forcibly at first sight; but as it diminishes on closer examination, we ought to be assured, before we venture on a reform, that the magnitude of the mischief justifies the danger of the experiment. But, in arguing this point, the question is not with those who wish to alter the form of government, but with those who, changing this part of the system, would retain the rest. If any man think a republic preferable, he may consistently recommend a new modelling of elections; for if the king and the House of Lords were laid aside, the present disproportionate representation would produce only an ill-digested oligarchy. Nor is the question with those who insist on representation as a natural right;[1] for it is only so far a right, as it conduces to public utility by the establishment and administration of salutary laws. These effects depend on the disposition and ability of the counsellors. Hence, if men the most likely to know and promote the public interest, be actually returned, it signifies little who return them; nor would any prudent statesman subvert the settled rules of repre-

[1] If the right be natural, it must belong equally to both sexes; and yet every plan of reform excludes the votes of females, and thus cuts off one half of the public from a right said to be inalienable, indefeasible, and imprescriptible.

sentation, without the prospect of procuring better representatives. Before, then, we seek to obtain any thing more, let us see what we have already. We have a House of Commons, composed of 558 members, amongst whom are the most considerable landholders and merchants; men of rank in the army, navy, and law; the great officers of state; together with private individuals eminent for their knowlege, eloquence, and activity. Now, if the country be not safe in such hands, in whose can it be? If such men be liable to corrupt influence, what men will be less so? Does any new scheme of reform promise to collect more wisdom and integrity? If not, where is the folly of the present system? Besides, as no assembly of men can maintain its place in a mixed government, unless its members possess individually considerable personal importance, whatever may be the defects of the present plan, it still secures a great weight of property in the House of Commons, by rendering seats accessible to men chiefly of large fortune; and hence, those are engaged in the defence of the separate interests of this branch of the legislature, who are the best able to support its claims. The constitution of most of the small boroughs contributes undesignedly to the same end, where the appointment of representatives is commonly annexed to great property. Popular elections are, in this respect, uncertain: in times of tranquillity, wealth will naturally prevail; but when men are influenced by political dissensions, this influence often yields to more impetuous motives. The variety of tenures and qualifications for votes is a great recommendation of the present mode, as it tends to introduce into parliament a mixture of characters and professions. Besides, the small boroughs open a door for the introduction of conspicuous abilities; for if such are bought, they are bought by those who know how to make the best use of their talents; or if given to nominees, the patron finds his

interest consulted by the abilities of his choice; and if certain of the nobility thus send their dependents into the lower house, the alliance between the two branches of the legislature is maintained, which no good citizen would wish to see destroyed; since it helps to keep the government in the House of Commons, where it would not long reside, if the peers were totally excluded from all share in its constitution. If there be a few boroughs at the disposal of the crown, while the number is known and small, they may be tolerated without danger; for where would be the impropriety, if the king nominated at once a certain number of his servants to seats, or if seats were annexed to certain responsible offices? Even now, with all its imperfections, the system works well for the people: for the representatives are so connected with the community by a union of interests, that the will of the people, when it is fixed and general, must at length prevail.

But though no reformed representation will collect a set of men more fit to transact the business of the nation, or more interested in its prosperity, one consequence may be expected from reform in the diminution of the influence of the crown. Now, as this diminution is the declared and sole design of the various plans proposed for regulating elections, contracting the duration of parliament, or purifying it by the exclusion of placemen and pensioners, surely the same end may be attained more safely and certainly by a direct reduction of the patronage of the crown; and while superfluous and exorbitant emoluments of office are suppressed for the present, laws may be devised to restrain for the future the number and value of places in the gift of the king.

But before we admit any scheme of reform, a question arises, whether this influence can be destroyed, or even diminished, without danger to the state; and which by many wise men is deemed necessary for giving

cohesion and solidity to the whole fabric of the constitution. Were the measures of government, say they, opposed from principle alone, the measures ought to have only rectitude to support them; but as opposition springs from other motives, the government must have this very influence to counteract those motives, and as a weight to place in the scale to set the balance even. Besides, as power will press on the limits that confine it,—the impatience of control and inferiority; the pleasure of mortifying the great, or the hope of dispossessing them; the desire to question and thwart what is dictated or proposed by another; the love of power and of showing it, natural to all, and in popular assemblies inflamed by communication; to say nothing of private designs and resentments,—may wholly or partially combine, as motives, to lead the House of Commons to endeavor to grasp at the entire government of the state, or to obstruct the course of public affairs, to the detriment of the nation at large. Nor are there wanting in the pages of English history grounds for these apprehensions.

During the four reigns immediately preceding that of James I., the king carried his measures in parliament by intimidation; nor was it till a conjunction of fortunate events delivered the people from slavery, that the overbearing system, already declining in the time of James, eventually expired in the reign of his son. Now, though, after the Restoration, and since the Revolution, the principle of intimidation has given place to the more successful expedient of influence, still they, who know what passed between the abolition of the old system and the establishment of the new, would, as friends to regal government, little wish to see the troubles of that interval revived. A recent proof is given in the revolt of the American colonies: for to the want of such influence, sufficient to counteract the spirit of democracy, which animated the Houses of Assembly in the colonies, are

to be attributed the changes, not to say misfortunes, that took place in the British empire. Nor can such examples lose their weight with those, who are content with the general frame of the constitution, and who found the perfection of a government on its stability.

What is here said is, however, not intended as a justification of bribery or of any other reward, whose secrecy betrays a consciousness of guilt, the more to be checked in its outset, as the extent of its operation is unknown. By the influence here defended is meant the result of the acceptance or expectation of preferments, which require no sacrifice of probity. On political points the arguments are often poised so equally, that the wisest may hesitate to decide on subjects of indifference. But even if the subject be not indifferent, it will appear so to those, who, from any cause, are unable to collect and weigh the reasons for and against, and to whom such questions are of apparent indifference. A third case, where the judgment is held in abeyance, is when, in personal contests, no reason of public utility can be given for the preference of a particular competitor. Now, as in such questions the decision must be determined by some influence, the point is, what influence is to be admitted. Remove the influence of the crown, and you merely make way for some other influence, equally foreign to the merits of the question, and arising from the excitement of passions arrayed against the power of government. Nor is it just to infer that, because men are led by interest to assent to measures really or apparently indifferent, as explained above, they will, through the same interest, be led to act in deliberate opposition to their duty. Of the most unquestionable measures of administration since the Revolution, how few are there about which the wisest might not have doubted, and how many questions must have been indifferent to the majority of those who agreed to them! But from the facility with

which those measures were carried through the influence of the crown, must we conclude that a similar influence would now carry measures detrimental to the country? Is there not more reason to fear, that the crown, if deprived of such influence, would be unable to support its prerogatives? When we reflect that the House of Commons is armed with the power to extort a compliance with its resolutions, by a refusal of the annual grants of money for the purposes of the state; that, in the changes of political interests and passions, this power, dormant so long, may again be directed against the executive; it will, perhaps, appear that there is less of paradox than truth in the much-decried apophthegm, 'that an independent parliament is incompatible with a monarchy.'

CHAP. VIII. ADMINISTRATION OF JUSTICE.

The first maxim in a free state is, that the legislative and executive power be lodged in two sets of men: for when both are united in one set, particular laws are often made to suit particular cases, from partial motives and for private ends: but when they are kept separate, general laws are made by one set, ignorant whom they may affect, and are executed by another, let them affect whom they may. For if the courts of Westminster-Hall made their own laws, or the King, Lords, and Commons tried and decided causes at their bar, it is evident, 1. that the decisions of such a judicature would be so many laws; and, 2. that when the parties and their interests were known, the law-makers would attach themselves to one side or the other, and, in the absence of fixed rules to determine their judgments, and of a superior power to control their proceedings, their private inclinations would interfere with public justice. Hence, the people would live under no laws previously known, or, if known, made on no fixed principles, but suited to particular occasions, contradictory, and varied, according as the motives for their enactment changed.

But by the division of the legislative and executive, parliament knows not the parties whom the law will touch, and, uninfluenced by private motives, will enact laws only with reference to their general effects. On the other hand, when laws are once made, judges must abide by them; for the legislative being the greater power will not permit the executive to swerve from them, nor can the judges make the general enactment bend to private interests.

This fundamental rule of civil jurisprudence is violated by bills of pains and penalties, and all *ex post facto* laws, in which parliament unites the legislative with the executive. But such violations nothing but the most imminent peril of the state can justify. The offender, whom no existing laws can punish, must go unpunished; and all that the legislature can or ought to do, is speedily to remedy the defect in the law, and to provide against the future commission of the crime. The escape of one delinquent can never produce so much harm, as the infraction of a general rule, on which the purity of justice and the existence of liberty essentially depend.

The next security for the impartial administration of justice, especially in government prosecutions, is the independency of the judges: for as, in such cases, the judges are the umpires between the king and people, they ought to be independent of either, or equally dependent on both; that is, appointed by one, and removable only by the other. For this memorable improvement we are indebted to the Revolution; before which time the judges held their places during the pleasure of the king; but now they can be deprived of them only by an address from both houses of parliament. Still further to complete the independency of the bench, their salaries ought to be certain and liberal, not only to guard them against bribes, but to render the office worthy of the ambition of men eminent in their profession.

A third security for the administration of public justice is, that the judges be few: for the calm reflection and patient inquiry necessary for the solution of judicial questions are incompatible with the passions, prejudices, and clamor of numbers; besides, the shame of unjust decisions is more easily divided, where each shelters himself under another's example. Hence, their number ought to be so few, as to make the conduct of all conspicuous, and each responsible in his own reputation for the opinion in which he concurs. The utility of thus diminishing the number of judges has been seen in the practice of parliament, where matters are taken from a decision of the whole house, and vested in committees of thirteen. In this choice of a number, however, the preference ought to be given to an even over an odd one, and of four to any other number; for in this number there is enough to contain a variety of opinions, and not too many to destroy individual responsibility. Besides, nothing can be decided without a majority of three to one—a proportion not too great, when every fresh decision is to form a future precedent; and, lastly, if, from an equality of votes, there be no decision, although the parties may suffer from such indecision, the public safety is not endangered by a hasty precedent.

A fourth requisite in the constitution of a court of justice, and forming a powerful check on the discretion of the judges, is the publicity of its proceedings before a promiscuous concourse of bystanders, and the members of the law. In the presence of such an assembly, where the impartial opinion of the intelligent bar will guide the less intelligent though equally impartial public, the judge will fear to indulge his dishonest wishes, as he must encounter, what few can support, the censure of his equals and the reproaches of his country.

Something is also gained by the option given to the suitors to apply to one of three courts of concurrent

jurisdiction, and thus to avoid a tribunal where an ignorant or suspected judge may be presiding.

Lastly, when several courts, co-ordinate to, yet independent of, each other, subsist together, it is requisite that the appeals from all meet and terminate in one and the same superior court, with a view to preserve uniformity of decision in the inferior courts, and to keep each within its proper limits; for, without such a common appellant jurisdiction, the same question might be differently determined in different courts; and without a superior court to decide between such contradictory decisions, the decision of each would be final, and cause endless confusion; and, in like manner, in contests between two courts, equally anxious to extend its own powers, and to encroach on others, a superior court is necessary to act as umpire between the two, and to keep both within their respective bounds.

Of judicature there are two kinds; one fixed, the other casual: in the former, the office of the judge remains in the same person; in the latter, the office remains, but the person is changed. Although the permanent judge possesses the knowlege arising from long experience, still, as he is known before-hand, he is accessible to the parties, and may be acted on, by the influence of hope or fear, to swerve from his duty; while the judge not permanent, though not exposed to the same bias, possesses less knowlege of law than the other. To obtain, then, the advantages of both without the inconveniences of either, the English law leaves causes to be tried by a jury of twelve casual judges, assisted by one fixed judge; and while the latter imparts to the former the fruits of his legal knowlege, the jury, by their disinterestedness, can check the influence they find or fancy the judge to feel one way or the other. If there were no jury, the judge might inflict injustice, from passion, prejudice,

or self-interest; if there were no judge, injustice might be inflicted, by the operation of similar feelings, or even the ignorance of the jury; and against the evils of either plan the present system offers the best security.

From so excellent a mode of trial every deviation ought to be watched with vigilance, and admitted with reluctance. Summary convictions before justices of the peace, the jurisdiction of courts of equity and of conscience, and all extensions of the distinction between questions of law and fact, are so many infringements on this great charter of public safety.

The trial by jury is, however, found inadequate for the purposes of justice, during times of strong political or religious excitement, or when the interest of the jurors is opposed to that of one of the parties; as in the case of the clergy contending with their parishioners, or landlords with their tenants; and, as juries are taken from the county where the subject of dispute arose, the danger of prejudice, on the part of the common people, of whom juries are composed, is not small, where, from a previous knowlege of the parties, and with an imperfect knowlege of the facts, the cause is decided almost before it is brought into court. More exact justice would, doubtless, in some cases, be obtained, if the question were decided by the judges alone; but it is too much to expect the same purity of conduct in judges, when their power is not, as when it is restrained. The ill effects, however, of local prejudices might be corrected by a law,[1] empowering the court, where the action is brought, to send the cause to trial in another county, and that the expenses attending the change should fall on the party who applied for it.

[1] Paley seems to have forgotten that a law, similar to the one here recommended, does really exist.

There is a second division of courts of justice, which presents an alternative of difficulties; for either a few sovereign courts may be established in the metropolis, to which the whole empire must resort; or local courts may be erected in different districts. Each plan has its own advantages and disadvantages. If the court be remote and solemn, justice becomes expensive and slow; for, 1. witnesses and agents are to be brought from a distance; and, 2. tribunals few in number are sure to be overwhelmed by the accumulated business of an empire, and a prompt hearing can scarcely be given to any complaint, and an immediate answer to none. On the other hand, if justice be rendered cheap and speedy by the erection of local courts, the good thus obtained is counterpoised by the evil resulting from the probable ignorance and partiality of the judges, and the contrariety of their decisions. By the establishment of the circuit or itinerary judges, the administration of law is relieved from both these objections: for, as the judge comes into the county, a stranger to the private interests of the parties residing there, he has no motive connected with local feelings to pervert the course of justice. Again, as the judge belongs to one of the supreme courts, it is fair to presume that his professional qualifications are fitted to the importance of his station. Lastly, as the lawyers who accompany the judge are themselves practitioners in those superior courts, to which their proceedings are all amenable, they take care that the rules of evidence and adjudication adopted in those higher courts are adopted also in the inferior; and thus, what is the perfection of justice, one law of the land is made to pervade every district of the empire.

Next to the constitution of courts of justice, we have to consider the maxims which ought to guide their proceedings; and here the chief inquiry is, how far it is expedient to adhere to former decisions, or whether a judge ought to attend to any thing but the merits of

the case before him. Now, though a single precedent should never be deemed incontrovertible, yet general expediency requires that a series of precedents be not overthrown without a detection of manifest error or dishonesty in the judge or court, by whom the question was first decided: for, by this deference to prior decisions, first, the judge is bound by certain rules; and, secondly, as the subject can likewise know those rules, he knows how to act and what to expect. Were the judge left free to decide, uninfluenced by precedents, he would be entrusted with a power too dangerous to be given to any man, by opening the door to concealed partialities; which, as they cannot be destroyed, must be confined within positive bounds. It is in vain to say that parliament is at hand to punish abuses of judicial discretion: for how can parliament pronounce a decision to be wrong, where there exists no acknowleged standard of what is right? an event which must frequently occur, if prior decisions be not attended to.

By adhering to precedents, not only is the danger of partiality diminished, but all thus obtain an assurance of their rights, and a knowlege of their duties; for, as each man can expect only that decision in his case, which he knows others to have received in cases similar, and as such expectation can rest only on the existence of precedents, and the value set on them; to remove the grounds of his expectation, by rejecting such precedents, is to entail on him the worst effect of slavery, an uncertainty in his rights, and an ignorance of his duty. The well-being of society further demands a uniformity of judicial proceedings; for if they be not uniform, (and they can be uniform only by adhering to precedents) the event must be uncertain; and as the certainty of failure checks the spirit of litigation, so the uncertainty of non-failure will lead to law-suits, which the smallest chance of success is sufficient to encourage; to say no-

thing of the intimidation which a dubious litigation holds out, favorable only to the strong in purse. Besides, though justice be done to the parties by a decision, no advantage can accrue to the community, unless the decision be such as to put an end to future litigation, by so settling a doubt once raised, that no question can ever present itself similar to the parent one. Now this advantage can be attained only by considering such previous decision as a direction for future judges. Add to this, that every departure from decisions long submitted to shakes the stability of all legal title; for, instead of fixing a new, it is merely unfixing the old points; since, if one race of judges be permitted to set aside the decisions of their predecessors, those who next try the question may as fairly set aside the decision last made.

But though the public gains much by this adherence to precedent, two evils arise from it; 1. in the hardship of particular decisions; and, 2. in the intricacy of the law as a science. On the first of these evils, however, it may be observed, that the general utility of uniformity is of more importance than the injustice of a particular case; and, on the second, that the intricacy of the law merely induces the necessity of the separate profession of advocates; who, withdrawn from other pursuits, are thus enabled to obtain that knowlege of the law of precedent, which, being the fruit of laborious research, cannot be obtained by the great mass of the community, all of whom are nevertheless affected by the law of precedent, of which they are, and must be, ignorant.

Since the maxims of natural justice are few and evident, whence, it has been asked, arise so many doubts in their application? If the principle of municipal law be simple, whence the difficulty of administering it? Where the rules of moral conduct

are clear, what room is there for litigation? If a system of ethics, founded on reason and revelation, can be comprised within a pocket-volume, and the moralist can, as he pretends, describe in a few pages the rights and duties of mankind, in their different relations to each other; what need of those codes of criminal and civil law, and mass of statutes and precedents, which require a long life to peruse even, much less to remember? for, unless the laws of nature and morals be not so uniform and certain when applied to practice, as they appear to be in theory, it were better that every case were tried on its own merits, than to be fettered by precedents, whose only use is to give, what judicial proceedings would otherwise want, certainty and uniformity.

To account, then, for the origin of so much litigation, despite the clearness of natural justice, it is to be remarked,—

1. That in a theory of morals, not only facts, but even motives, are supposed to be laid bare; while in a court of justice, both facts and motives, previously unknown, are to be elicited from conflicting testimony and contending probabilities, which, offering at every step grounds for doubt, lead of course to litigation. Besides, the science of morality is rather a direction to persons who are conscious of their own motives, and to whose consciousness the moralist can and does appeal, than a guide to a judge, whose decision must proceed on rules of evidence, and calculations of credibility, with which the moralist has no concern.

2. Many cases occur, where the law of nature or of expediency merely ordains that a general rule be established and adhered to, but, leaving to the law of the land the details or modification of such rule, determines nothing positively respecting its application.

Thus, while it ordains that the peace of a country is not to be disturbed by the want of laws to regulate inheritances, it neither states what those laws ought to be, nor even what is to constitute an inheritance; points which, unable to decide itself, it leaves to the law of the land to determine. This neutrality of the law of nature is found on nearly all questions relating to the acquisition of property; and as recourse must be had to the law of the land, known from the statutes of parliament and the precedents of the courts, the interpretations of such statutes, and the search after such precedents, becomes the business of professed lawyers.

Besides, positive authorities are wanted to give precision to things in their nature indeterminate. Thus, though nature has not determined one and the same period of time when a youth ceases to be a minor, still, as it is necessary that a precise period be fixed, the law must determine, what nature has left indeterminate, respecting the period of nonage. Again, there are things in their nature perfectly arbitrary, and to which certainty can be given from positive regulations alone. Thus, by the law of nature, it is expedient that a limited time be assigned to a defendant to plead to the charge laid against him, and that the default of pleading within the given time be taken as a confession of the charge; but as the law of nature cannot define the length of such necessary time, it can be defined by law or custom alone; and the same remark applies to all those proceedings, which form what is called the practice of the courts.

3. In a contract, whether express or implied, which involves a great many conditions, since the parties expected that in the interpretation of such conditions they were to be guided by the custom of the country relative to such transactions, they can, by the law of nature, refer only to such custom. But as the

custom itself may, from various causes, be matter of dispute, the question respecting the contract can be decided only by litigation.

4. In cases, where the engagements, which a man enters into during life, continue (as it is expedient they sometimes should do) after his death, it follows, that the claim to rights will rest occasionally on transactions that took place between the ancestors of the parties who respectively claim and resist such rights. Thus, in a dispute, for instance, concerning tithes, in which an exemption or composition is pleaded, the question depends on the agreement which took place between the predecessor of the claimant and the ancient owner of the land. Now, though the appeal to such an agreement is dictated by natural equity, as well as by municipal law, still many doubts, to which the law of nature affords no solution, may arise respecting the terms of such agreements, and the credibility of the evidence by which it is to be supported; and as that which cannot be directly proved must be left to indirect presumption, the question can be decided by a lawsuit alone, where all the direct evidence will be produced, and all the indirect presumptions thoroughly examined, by an impartial court.

5. The quantity of injury, even when the author of it is known, is often dubious. Thus, though the law of nature cannot define the amount of injury done by an assault, or by scandal spoken or written, or by the seduction of a wife or daughter, and consequently cannot settle the extent of reparation for such injuries, it still commands some reparation to be made; and if the sufferer and aggressor cannot agree respecting the extent of such reparation, recourse must be had to courts of law to put an end to such disagreement,

6. Written laws, from the imperfection of language or the shortsightedness of man, must be frequently am-

biguous. Hence, doubts arise respecting their interpretation in cases which the legislature did not foresee, or, if foreseen, did not accurately provide for. In such cases, if the law be construed according to the letter, it will be found to be defective; if according to the spirit, it will give the judge a latitude of application, fatal to liberty, by making the expounder of the law virtually its framer, and by introducing that uncertainty in the rules of adjudication, which it is the very business of legislation to take away. In this dilemma, as it cannot be known beforehand what the decision will be, room is left for litigation, from which alone a satisfactory result can be obtained.

7. As the decision of a court on every new question is a precedent for future adjudications, not so much with reference to the decision taken by itself, as in connexion with the principles on which it is founded, it is necessary for a judge to look both to and beyond the individual merits of the case, and to reflect whether the principle which he adopts can be applied equally well to other cases, which may admit of a comparison with the one before him. Without this necessity, the decision of the cause might be easy; but with it, the court becomes embarrassed by doubts, which subsequent considerations, arising out of future litigation, can alone eventually solve.

Finally, after all the certainty that points previously doubtful can attain, through the results of continued litigation, one principal source of legal controversy still remains in the competition of opposite analogies. A doubtful point of a positive nature can seldom be mooted oftener than once; [because a second decision, if in unison with the first, removes all doubt on future questions similar in all their parts to the two preceding.] But new cases frequently arise only partially similar; and when the analogy drawn from the principles of one decision is at variance with the analogy drawn from the principles of another, where both

seem to bear equally on the case in point. Now, as the skill of the advocates on either side is employed in combining analogies apparently dissimilar, and separating those apparently similar, so the sagacity of the judge is seen in his detection of the fallacies of both, and in his reconciliation of conflicting principles; or, if that be impossible, in his perspicuity to see which is the weaker, and ought to yield. For instance, in the question connected with literary property, it was argued, that the mental labor expended by an author on his work, is similar to the manual labor expended by an operative on his work; and that as the produce of manual labor is the property of the operative, so the produce of mental labor ought to be the property of the author; and as the operative is protected in the enjoyment of his property by rights, exclusive, assignable, and perpetual, so is the author entitled to the same protection of his property by similar rights. To this it was replied, that a book is similar to the invention of a machine or a medicine; and that as the law permits these to be copied, except where an exclusive sale is reserved by a patent to the inventor, a book, unless so reserved, may be copied likewise. The competition of these analogies constituted the difficulty of decision; and the same may be said of the majority of cases found in the Reports; although it must be confessed that the analogies there produced are sometimes so entangled as not to be easily unravelled, and so obscure as not even to be perceived.

Doubtful points of law are, however, not so numerous as they are supposed to be; and even in the few that are reserved for the decision of the judges, the uncertainty does not arise so much from the imperfection of the law, as in the means of human information.

Admirable as is the general constitution of English jurisprudence, there are still two leading points in it liable to objection.

The first is the rule which requires unanimity in the verdict of a jury. Now, to expect twelve men to agree on a point confessedly dubious, or to suppose that, if they differ, any real unanimity can be the result of confining men without fire, food, and candle, till they do agree, is as foolish as the institution of the jury itself is wise. Still, though the rule is unreasonable, it is not often really detrimental: indeed, in criminal prosecutions, it operates in favor of the prisoner; for if a juror must surrender his opinion to that of others, he will more readily resign it to acquit than condemn, [unless in times of high party feelings:] in civil suits also, it adds weight to the direction of the judge; for, when a disagreement takes place, not likely to be easily reconciled, amongst the jurors, they will naturally close their disputes by a common submission to the learning of the judge. On the other hand, in such forced unanimity there is less assurance of the correctness of the verdict, than if the decision were left to a plurality, or to any fixed majority of voices.

The second peculiarity objectionable in theory, whatever may be its practical success, is the choice of the House of Lords as the last appeal from every minor court; for what is there in the constitution of that assembly, or in the acquirements of its members, that can qualify them for such a duty? Are not officers of the army and navy, courtiers and ecclesiastics, young men just entering on a career of dissipation, and country gentlemen immersed in private business, or retired from public life, born to their station, or advanced to it for merits or motives unconnected with legal qualifications, all found to compose a tribunal, whose duty it is to review the decisions of men who have made the law their whole study? Still is the mischief of so absurd a system little or none; for, by placing amongst the peers some of the best lawyers, and by calling in the judges on points of law; from the deference paid

to the better by their less-informed colleagues; the appeal is not to the Lords alone, but to the wisdom of the supreme courts of justice, who receive rather the sanction than follow the direction of the assembly where the appeal is heard.

But even with these imperfections, minute if real, a politician, who should frame a system of administrative justice, guarded against corruption, and combining knowlege with impartiality in the functionaries, would, after all, frame merely the counterpart of English jurisprudence; and hence the discontented may learn to acquiesce in the pure administration of laws, by knowing that the first end of the social union, sought elsewhere in vain, is found here in all its perfection.

CHAP. IX. CRIMES AND PUNISHMENTS.

The end of human punishment is the prevention of crime, and not the retribution of so much pain for so much guilt; although the last is the plan which perfect justice would dictate, and is, therefore, the dispensation we expect from God. But, whether justice can be said to demand any or what punishment, I do not now inquire; but I assert that this demand is not the end of punishment: for the offence (if impunity produced no mischief beyond the act itself) might go unpunished; but, as the impunity of one offender would lead others to repeat a similar offence, human laws can inflict punishment only as an example. Now, as the severity of punishment must be regulated by the necessity for its use, and as this necessity depends on the utility of prevention, crimes are properly punished, not according to the mischief done, but to the difficulty of preventing them. Thus, the stealing goods privately out of a shop is an act not more criminal than stealing them out of a house; yet, as the former theft is more difficult to be prevented than the latter, it is punished with greater severity. Hence, as crimes must be prevented,

all necessary means are justifiable; and as they are justifiable only because they are necessary, punishments must not be severe, if milder will answer the same purpose of prevention. Thus, the sanguinary laws against counterfeiting or clipping gold coin, might be just, when prevention was difficult; but when the detection of the fraud by weighing became known, the prevention became easy, and an execution would now be unjustifiably severe. On this principle, may be explained, what appears to be an absurdity in the penal laws, by which a breach of trust is either not punished, or punished less than other frauds: and to the question, Why should a violation of confidence, which increases the crime of peculation, mitigate the penalty? it may be replied, that this lenity is strictly just; for a due caution in choosing the person to be entrusted, in limiting the trust, and in demanding security, might prevent the mischief; and the law will not interpose to protect him who would not protect himself; but it will interpose, and does so with severity, where no reasonable vigilance could prevent the crime. On this principle, the stealing of sheep or horses in fields, or of cloth from bleaching-grounds, are punished with greater severity than other felonies; not with reference to the greater moral turpitude of the acts, but because such necessary exposure of the property, as it makes the prevention more difficult, so it justifies a greater punishment. In like manner, the difficulty of detection justifies a greater punishment, as in the case of the writing incendiary letters, without any, or with false signatures.

But if human punishments are thus regulated less by the quantity of guilt, than by circumstances so varied, that not only equal crimes undergo unequal punishment, but even a less crime the greater, why should a different measure of justice be expected from God than is observed by man? Must not the rule, which befits

the justice of God, suitequally with human laws? The answer is, that a Being, who knows the very thoughts of his creatures, and whose punishments none can escape, may conduct his moral government in the wisest way, by punishing crimes according to their moral turpitude alone. But when the public safety is entrusted to men necessarily so deficient in power and knowlege, that the greatest offenders often escape, or, if discovered, are, from the imperfection of law, only slightly punished, a different rule must be adopted; and as the certainty of punishment which exists with God, justifies one rule on his part, so the uncertainty which exists with men, will justify another rule on their part; and instead of proportioning the punishment to the guilt, which God can, but man cannot do, the latter can only compensate for the uncertainty by severity; a rule which God, from his greater knowlege and power, need not adopt.

There are two methods of administering penal justice :—

1. Where the capital punishment, affixed to a few offences, is inflicted invariably;

2. Where capital punishment is affixed to many offences, but inflicted only on a few.

Of these methods, the last is adopted in England, where, out of ten sentenced to death, scarcely one is executed; and the reason given for the adoption of this method is, that by the selection of objects for capital punishment, such circumstances may in each case be taken into consideration, as might be unknown, or not so well known, before, as after conviction. Hence, though it be necessary to fix by law the limit to which punishment may be extended, still its mitigation may be safely entrusted to the discretion of the executive magistrate, influenced by the view of all the circumstances that go to prove the quantity and quality of the crime. Without such a power of mitiga-

tion, some would escape who ought to suffer, and others suffer who ought to escape: for, if death were affixed irrevocably to few offences only, crimes of the most heinous character might be perpetrated, which, not included amongst those made capital, would escape the punishment due to their malignity; and, what is worse, would be committed, because it was known they would not endanger the offender's life. On the other hand, if to reach such cases, the penal laws be multiplied, and executed invariably, punishments would become more sanguinary than necessity could justify, or public feeling endure.

The law of England is framed on a better policy. By creating many capital offences, it embraces every crime which can merit death; but while it singles out for execution only those cases, whose aggravation renders them fit examples of justice, a few only suffer death, though all feel the dread of it. Thus wisdom and humanity conspire to exonerate England from the charge of multiplying, beyond other countries, capital offences; and, on the head of cruelty, it may be observed, that the legislature never intended the indiscriminate execution of these laws; for otherwise it would not have given the crown the power to relax their severity, when circumstances, sufficiently palliating the crime, presented themselves; while, in defence of the lenity of the laws, it may be stated, that, as in every class of crimes some few require the restraint of a capital punishment, those few would be released from such restraint, unless the whole class were subjected to the same punishment.

Amongst offences requiring capital punishment, that of privately stealing from the person can hardly be justified even on this principle; for where no force is used, neither the amount of the property lost, nor the theft itself, can warrant such severity; especially as, without the carelessness of the sufferer, the crime

can never become so frequent as to require the penalty of death.[1]

The prerogative of pardon has been well reserved for the crown, as being too high a privilege to be entrusted to any inferior officer. Besides, the king can best collect advice to use, and is the least likely to be influenced to abuse, the privilege. Such a power ought, however, to be exercised with discretion, and yielded to the solicitation neither of pity nor party; but, viewed as a judicial act, the deliberation of the crown should be conducted with the same impartiality as the court was expected to maintain at the trial of the offender: for, whether the prisoner be guilty, and whether, being guilty, he ought to be executed, are equally questions of public justice; and as the conviction should depend on nothing but guilt, so the execution should depend on nothing but the intrinsic merits of the case; while the admission of extrinsic considerations is a crime on the part of the authors and advisers of such unmerited partiality, similar to the corruption of a judge.

The aggravations, which ought to guide the crown in the selection of objects for punishment, are, 1. repetition; 2. cruelty; and, 3. combination. With regard to the first two, if ever rigor is necessary, it is so when crime has been repeated, or committed under circumstances of cruelty; and, with respect to the third point, since numbers confer strength on offenders, the difficulty of defending the public is greater; and as this difficulty is the only justification of severity, a combination must be punished, where a single culprit might escape.

In crimes, however, perpetrated by many, it is proper to select the ringleader, and the person who first did the act of mischief, from those not so prominent; not

[1] This, and many other penal statutes, to which Paley alludes, have been since repealed.

from any real difference in their guilt, but for the sake of showing the danger of taking the prominent part.

Injuries effected by terror and violence first demand suppression; because, 1. their extent is unlimited; 2. no private precaution can guard against them; and, 3. they render life and property insecure. But as frauds can proceed only to certain limits, or may be prevented by circumspection, and do not render life as well as property insecure, the spirit of humanity has made only crimes of violence punishable with death.

In estimating crimes of violence, regard should be had, not only to the mischief done, but to the alarm, to which the fear of such mischief, or of a repetition of it, gives rise. Thus, in the crime of breaking into a dwelling-house by night, we are to consider not only the loss of property stolen, or intended to be stolen, but the dread also with which we must view the hours of sleep, if burglary were frequent. Hence, the difference between breaking into a house by night and by day, and of the different punishments for such offences in the Mosaic and most other codes of law.

Of injuries effected without force, the most noxious are, 1. forgeries; 2. counterfeiting or clipping coin; and, 3. stealing letters in the course of conveyance; since all of them interfere with the conveniences of life, and interrupt commercial prosperity. But, though these crimes seem to affect property alone, they do not end there; for if such offences became so frequent as to render the use of coin, or the circulation of bills, and the conveyance of letters, no longer safe, all trade must decline; and as the sources of subsistence failed, the country would become deserted; distress, arising from want of employment, would cause a depopulation, till solitude would overspread the land, and desolation stalk through untenanted cities and uncultivated fields. Since, then, such would be the ultimate

consequences of these crimes, it is plain that though no living creature be immediately destroyed by them, life is endangered by acts, which, apparently effecting merely the loss of property, or of slight enjoyments, may eventually lay waste human existence. Hence, those who regard the Mosaic rule of 'life for life' as the only justifiable measure of capital punishment, will find a greater resemblance than they probably fancied, between crimes which affect the person and the purse; and that frauds may, in their ultimate effects, be so frightful, as to merit the utmost rigor.

There seems, however, to be a substantial difference between forging bills or promissory notes, and forging legal instruments, not commonly transferred from one hand to another; because, in the former case, credit is necessarily given to the signature alone, and for an object of general utility; while, in the latter, all possibility of deceit might be precluded by due circumspection, without any sacrifice of the general good. This distinction [1] is sufficient to prevent acts really different from being punished, as they now are, with equal severity.

Perjury is another crime of the same class and magnitude; for since, in all matters connected with the administration of justice, on questions of life, character, or property, confidence is necessarily reposed in an oath, its violation, by an act of perjury, fairly places it on a level with the worst of frauds, and justifies its exposure to an equal punishment.

The obtaining of money by secret threats, from the difficulty of detection, and the imputations to which it may lead, deserves a punishment proportionally severe.

[1] This distinction has not been seen, or, if seen, disregarded, by the legislature, which has lately remodelled the statutes relating to capital punishment, in the case of the forging of bills, notes, and legal instruments.

Much liberty, the dense population of large cities, and the want of a punishment short of death, will account for the frequency of executions in England.

Where the people possess many liberties, and are jealous of any infringement on them, crimes can seldom be prevented, from the want of that system of espionage, adopted with success in arbitrary governments. Hence, as free states will not permit persons to be confined on mere suspicion of guilt, nor compel the heads of families to furnish a description of the inmates of their house; nor require a person, on the demand of a magistrate, to give an account of his time, employment, or means of subsistence, and, in default of a satisfactory account, to produce security for his future behavior; nor confine persons to any particular district, or, if they wish to go from place to place, or to leave the kingdom, prevent them from doing so without first obtaining a passport; nor suffer the streets to be patrolled by a *gendarmerie;* [1] nor, lastly, entrust the police with a discretionary power to make sure of the guilty, even at the expense of the innocent;—the commission or concealment of crime becomes, in free states, more easy, and the necessity greater of punishments more severe.

In the dense population of large cities, the motives and means for the commission and concealment of crimes are ever at hand; for by collecting dissolute characters into the same neighborhood, confederates in crime acquire dexterity and daring to plan and execute mischief, and confidence from the security of an asylum: nor can crime, for which there is such facility, be checked, except by adding to the number of capital punishments.

[1] Since Paley's time the people have either become less jealous, or the government more strong; since a police has been introduced into England, and modelled on the plan of the French *gendarmerie*, though less offensive in appearance, and armed with scarcely a greater power than constables.

Had any punishment, short of death, been found sufficiently terrible to keep offenders in awe, executions would have been less frequent. Transportation, the punishment next in severity, is in many cases no punishment, and in all only a slight one; for he, who has no interest in a country, cannot care to leave it. Besides, the punishment is inoperative as an example; because it is little known to, and felt less by, those whom it is intended to deter. From this defect in the penal scale, it necessarily happens, that the same punishment is extended to crimes of a different die, and that the relative proportions of crime and suffering are disregarded almost entirely.

The ends of punishment are, 1. reformation; and, 2. example.

1. In the reformation of criminals little has been, and probably can be, effected. From every punishment hitherto invented, malefactors have generally returned only hardened in crime; and, as nothing but the dread of death can operate on a confirmed villain, it is probable, that the horror of his situation may cause such a wrench in his feelings, as to produce, if he were reprieved at the moment of execution, such a remembrance of his situation, as might prevent his relapsing into crime. But this experiment cannot be repeated often; [for if repeated, it would lose its effect; as no offender would despair of receiving such a reprieve until the last moment; and the incentive to crime would consequently be increased by the increased chance of escaping the punishment most severe.]

Of the reforming punishments, solitary confinement seems to promise the most success; for, secluded from his fellow-prisoners, of whom the worse are sure to corrupt the better, the criminal may wean himself from the love of his former precarious life, and, by reflecting on his past folly, effect a lasting alteration in his future conduct.

As half the vices of low life owe their origin to an aversion to labor, punishments ought to be so contrived as to diminish this feeling, or subdue it entirely. To effect this object, recourse has been had to solitary confinement, with and without labor; by the former system, labor is made habitual; by the latter, idleness is rendered insupportable; and the superiority of either depends on the question, not yet decided, whether he who has been accustomed to work, or he who has been miserable from the want of it, will the most readily become industrious. But if labor be exacted, the whole or greater part of the prisoner's earnings should be reserved for his use, and form a fund out of which alone he should be supported in prison, [and the overplus, if any, be given to him on his leaving it;] while the period of his confinement should be measured, not by length of time, but quantity of work, with a view to excite his industry, and make it more productive to him. But still the chief difficulty remains, how to dispose of him after his liberation; since very few will employ a person released from a jail, [and fewer still consent to work with a person so disgraced;] and thus an offender is shut out of all honest employment, and compelled to resort again to crime for his support. Until, therefore, this inconvenience is remedied, it were better for small offences to go unpunished, not so much by a relaxation of the law, as by the tenderness of persons to prosecute. But as it is incumbent on the state to provide maintenance for all willing to work, and yet absolutely necessary to separate criminals as far as possible from each other, whether some plan[1] might

[1] The plan proposed by Paley is, that male prisoners should, when the term of their confinement had expired, be distributed in the country, detained within certain limits, and employed on the public roads; and females be remitted to the overseers of country parishes, to be there furnished with dwellings, and with the materials and implements of occupation.

not be adopted for the employment and dispersion of criminals, is a question left for those, anxious to increase the happiness of all, and especially of such as would, if they could, regain their lost place in society.

No bodily punishment, however excruciating or long continued, is called torture, unless its object be to kill by a lingering death, or to extort the discovery of some secret from the prisoner. Ancient and general as is the 'question' by torture, its use has been wisely exploded in modern times, as well for its cruelty as inefficacy; for if the sufferer be obstinate, he will sink under it whether innocent or guilty; or if the desire of relief from pain insupportable compel the prisoner to speak, he is as likely to say what is false against others, as what is true against himself; and as this ambiguity is fatal to the ends of justice, its use becomes an act of gratuitous cruelty.

Barbarous spectacles of human agony are justly found fault with, as tending to destroy our sympathy with the sufferings of our fellow-creatures, and even to counteract the design of inspiring terror, by sinking the abhorrence of the crime in the commiseration of the criminal. But if a mode of execution could be devised, which would increase the terror of the offenders without lacerating the feelings of the spectators, it would effect, what is now wanting, an increase in the scale of punishment, especially if reserved for the most atrocious crimes. At present, a simple robbery, and one connected with every aggravation of cruelty, nay, even of murder, suffers the same punishment of death. To meet this view of the case, it has been proposed to cast murderers into a den of wild beasts, where they would perish in a manner dreadful to the imagination, yet concealed from view.

Punishments called infamous are ill managed in this country, as respects both the crime and the criminal; for they are not, as they ought to be, con-

fined to offences held in universal detestation: since to condemn to the pillory the writer or publisher of a political libel, who has enlisted by such very libel many persons in his favor, is to gratify the offender, and to expose the laws to mockery; while of the other offenders who suffer this punishment, the most are, like keepers of brothels, and similarly depraved characters, insensible to shame; and a punishment, which affects only the pride of human nature, affects a sense which they do not possess. Such punishments might, however, be employed with effect on offences in higher life, such as perjury or subornation of perjury, peculation, breach of trust, the sale of places, abuse of authority, or corruption in confidential or judicial offices; where the more elevated the station of the criminal, the more conspicuous would be the triumph of justice.

The certainty of punishment is of more consequence than its severity. Persons intending to commit a crime think less of the severity of the sentence they shall undergo, if detected, than of the chance of escaping altogether. Hence, a vigilant police, backed with the influence of pecuniary rewards to discover offenders, and an undeviating impartiality in executing the laws, will more completely suppress crime than severity of punishment. Hence too the utility of facilitating convictions, as in the case of counterfeiting the coin; where the crime could scarcely be checked by any severity, as long as the act of coining was necessary to be proved; but when the possession of implements for coining was admitted as evidence of guilt, the difficulty of conviction was removed, and the greater facility of detection was naturally followed by the diminution of the crime; and so in the case of the murder of bastard children, the statute of James I. which deems the concealment of the birth to be evidence of the charge, by facilitating conviction, is well calculated to stop the crime.

From an ignorance of this principle, much harm is done to society by juries; who, demanding such proofs of guilt as the secrecy of the crime is frequently unable to give, are unwilling to condemn, while there exists the slightest possibility of the prisoner's innocence.

It is not, however, meant to say that juries should magnify suspicions into proofs, or weigh probabilities in gold scales; but if the evidence be such as would safely decide doubts on ordinary occasions, to reject it as uncertain in the case of a criminal, from the fear of shedding innocent blood, is a conduct natural, perhaps, to a mind studious of its own quiet, but uninfluenced by any considerations of rectitude or utility; as it only encourages villany by diminishing the chance of conviction.

The injudicious acquittals here complained of are defended by the maxim, that circumstantial evidence falls short of positive proof. This, as an unqualified assertion, is not true. A chain of circumstantial evidence is stronger than positive testimony taken by itself. Circumstances cannot lie; a solitary witness may: and though the former may mislead, the instances of actual deception are fewer than where the latter has been mistaken unwittingly, or has wilfully perjured himself. Besides, in a chain of circumstantial evidence, if the charge be fabricated, so many false witnesses are required, and such skill to bring the scattered rays of their evidence to a focus, while the difficulty of detecting a deficient link is so little, and the probability of betrayal by some slight and unforeseen inconsistency so great, that even the chance, much less the power, to impose on a court, is none, when compared with direct proof; which, confined to the knowlege of a single person, and unconnected with collateral circumstances, cannot be confronted with opposing probabilities.

Another maxim has been pressed into the service, that it is better for ten guilty persons to escape, than

for one innocent man to suffer.' But if by better be meant more expedient, the proposition can hardly be maintained. The security of life and property is protected chiefly by the dread of punishment; nor can the misfortune of an individual, who, though innocent, suffers death, be placed in competition with the general good. No person ought of course to be sacrificed knowingly: but when crimes can be reached only by adopting certain rules of adjudication, and giving credence to evidence seemingly satisfactory, justice must not be deterred from following such rules and believing such evidence, through the mere chance of confounding the innocent with the guilty; and a person so suffering innocently must consider himself as a sacrifice for his country's good; since that, for which he suffers, others are benefited by.

CHAP. X. RELIGIOUS ESTABLISHMENTS AND TOLERATION.

A religious establishment is no part of Christianity; it is only the means of inculcating it. Amongst the Jews, the whole constitution of the priesthood, marked out by divine authority, formed a part of the Jewish religion, as well as the means of transmitting it. Not so with Christianity. No church government has been laid down in the Christian Scriptures, and consequently there is no clerical constitution which Christians are bound to adopt. None such was commanded by Christ himself; and though the apostles appointed bishops and presbyters amongst the first converts, they appointed also deacons and deaconesses, with functions unlike any which the church exhibits at present. But even such offices were first created to suit rather the exigencies of the then society than to regulate the appointment of ministers in future times. This reserve of the Christian legislator may be easily accounted for. In the first place, no constitution could then be framed suited equally well to Christi-

anity in its primitive state, and when it should become a national religion; and, secondly, a clerical establishment would have so interfered with the then civil polity, that it would have formed a considerable bar to the progress of the religion itself.

The authority, then, of a priesthood is founded on its utility, as a scheme of religious knowlege and instruction, to be preserved by some and imparted to all; and every attempt to mix up church with state, with the view to support each other alternately, according as the prerogatives of the crown and the privileges of the church have been opposed by the spirit of the people, has served only to debase the institution, and, by fostering abuses, to endanger its very existence.

A religious establishment embraces three things; 1. an order of men devoted solely to the offices of religion; 2. a legal provision for such an order; and, 3. a limitation of such provision to the teachers of a particular sect. For if there be no clergy, as among the Quakers; or if the clergy have no provision beyond the voluntary contribution of their hearers, as among certain dissenters; or if the provision be assigned to various sects, as in America,—there can be no national religion.

To defend, therefore, an ecclesiastical establishment, its utility must be shown in these three essential parts of its constitution.

1. The question first in order as in importance, is, whether Christianity can be maintained in a country, where an order of men is not set apart for preserving and imparting religious knowlege, and secluded from other employments, for the purpose of devoting their time and talents to the duties of their ministry. On this point of necessary seclusion rests the whole gist of the question.

Now be it remembered, that the Christian religion is founded on the history of events that happened, of discourses held, and of letters written in a remote age and

in a distant part of the globe, where the customs, opinions, and institutions were very unlike what is found at present in Christian countries; that it was first promulgated in Judea, and is intimately connected with Jewish history, polity, and prophecy; that as the records of both revelations are preserved in languages no longer spoken, they cannot be understood without study; that the records must not only be read, but compared with what remains of other writings, connected with the subject of the Scriptures, with a view to the interpretation of doubtful forms of speech, and allusions to customs no longer in use; that to establish the genuineness and integrity of the canonical Scriptures, inquiries, demanding deep research and patient examination of historical and literary facts, are as necessary as a due acquaintance with ancient languages; and, lastly, that the qualifications requisite for such varied pursuits are inconsistent with the exercise of any other profession.

But it will be said, how few are there of the clergy either able or willing to augment the fund of sacred literature, or even to use what is already collected!

To this we reply, that we sow many seeds to raise one flower worth having; that opportunity is given to many for a few to profit by it; that as original talent is no more to be expected universally in this than in other professions, it is enough if some are thus qualified for such inquiries, and able to fix the faith of others, who, for the want of such guides, might wander from the path; and that the very learning, necessary for the defence of the religion, would be lost, unless it were preserved by an order of priests educated for the purpose.

But independent of this utility in the priesthood, the ordinary offices of prayer and preaching call for talents not usually met with; and although it is possible that a person not educated for the office should

acquit himself with decency as a teacher of religion, it would be surely bad policy to leave to possibility, what may be obtained with certainty by a provision for the regular instruction of a clergy. Nor can the example of the Quakers furnish a proof that Christianity can be upheld without a priesthood; for as that sect subsists only where clerical establishments are found, they profit by the writings of other Christians; and while they share in the general diffusion of religious knowlege kept up by the regular ministry, the defectiveness of their system is less felt, though its unfitness for general imitation is not the less obvious.

If, then, a permanent priesthood, withdrawn from the professions of a secular life, and consequently deprived of the support afforded by such pursuits, be necessary, it must be maintained either by the voluntary contributions of its hearers or from revenues assigned to it by the state. But though the zeal of a sect might afford such support for a time, no reliance could be placed on voluntary contributions for a permanent provision. Where worldly interests are opposed to religious feelings, the temptation is too strong for the many not to give up the latter for the former; and as men are always glad of any excuse for avoiding their share of a public burden, if by neglecting religion they could save their money, there is no question that only a few would attend at church, while the majority would justify their secession under the plea of conscience, as being unable to join in a worship, whose doctrines were questionable; and hence it must needs happen, that if it were left to the people to maintain, or not, a church, almost all would dispense with it; and though the pious might lament the choice, they would be unable to counteract its effects; for as the weight of maintenance must continually increase as the number of supporters diminish, the ministers of religion would first suffer, and then religion

itself, from the inability of the few, and the unwillingness of the majority, to afford that maintenance, without which no religion can long endure.[1]

Connected with the difficulty of supporting permanently a priesthood by voluntary contributions, is the consideration that the character of the priests would materially suffer by the adoption of such a plan. Preaching would become a kind of begging. Instead of the priest thinking how to increase the devotion of his flock, his attention would be devoted to the means of adding to the amount of his subscriptions; and his discourse, instead of being that of a preacher to persuade, would be a player's to amuse; for conscious that it is one thing to improve the heart and another to tickle the ear, and that his subsistence depended on his success in collecting a crowd, he could neither dispense the truths of religion, as if he felt their importance, with sincerity and sobriety, nor dispense with other arts little adapted to the communication of profitable instruction.

To be thus placed at the mercy of a capricious multitude, and compelled to adopt a style neither natural to the teacher nor suited to the subject, is so mortifying to the honorable pride of independence and to a virtuous love of principle, that it can be rarely submitted to, without a sacrifice of character to convenience; and a ministry, so regardless of self-respect, must fall into the hands of men the least worthy of the cause they espouse; for none others would engage in a profession so precarious and humiliating.

Since, then, by the rejection of the system of vo-

[1] Since Paley's time so great has been the increase of dissenters, and such their zeal and wealth united, that they are now able to provide for their clergy by voluntary contributions alone; but whether such provision either will or can be as permanent as they would be if their revenues were assigned by the state, is another question.

luntary contributions, a compulsory provision becomes necessary, the question is whether such provision should be confined to one sect or distributed amongst all indifferently. But this question never can arise, where the people agree in their religion; and it never could arise, if a system of worship were so framed, as to embrace all the articles of their common faith, and to reject all controversial doctrines; and if the religion so framed were to be made the state religion. But as such a combination is impracticable, (for in the midst of religious opinions so various, and even contradictory, separate congregations are unavoidable) whether the state ought to prefer one sect to all others, becomes a question dependent on another, relating to the manner how and the persons by whom the ministers of religion ought to be appointed. If, as in England, private individuals be permitted to nominate religious teachers for certain districts, without some test of the opinions of the nominee, the greatest confusion might prevail; for a popish patron might appoint a priest to say mass in a protestant parish, and an episcopal clergyman might be sent to officiate in a country of presbyterians, or a presbyterian divine to denounce the errors of popery before an audience of papists.

Since, then, a test is necessary as a restraint on private patronage, the power to propose such a test must be either in the legislature or individuals. But as the latter may be incompetent to decide what qualifications are requisite for a religious teacher in a particular district, the power of deciding must rest with the legislature alone. Now, as the legislature must decide by some general law, such decision will naturally lead to the preference of one sect universally.

Again, if the appointment of a minister rested with the parishioners, except in cases where all the parish were of one religion, contests would inevitably result from the desire of each sect to put its own minister in the pulpit; and as all contests amongst different sects

are carried on with a bitterness, unknown where religion does not interfere, animosities would be constantly kept up between the parties, to be revived with additional fury at each vacancy. [To prevent, therefore, such a scandal to religion, the decision should rest with some third party; which can only be the legislature, acting, as before, under a general law, which would lead to the adoption of a state religion.]

To the same end we shall arrive with even greater certainty, if we suppose the appointment of the minister to rest with the legislature, or, what is the same thing, be transferred to the head of the executive government; for the latter will, of course, appoint those alone, whose opinions agree with his own; and thus a test first, and, subsequently, a religion of the state, or of the person at its head, will be introduced.

The only plan, by which a clergy can be maintained by a compulsory provision, and without a preference shown to any one sect, is that which takes place in the United States of North America; where a tax is levied for the support of all religions generally; and when the tax is collected, a paper is handed to the person paying, in which is found a list of all the sects in the country, arranged in columns; and as he pays his quota, he subscribes his name and the sum paid in whichever of the columns he pleases; and the amount of each column is afterwards distributed amongst the ministers of the religion for whose maintenance the tax was levied. In this scheme, where, though the payment is compulsory, the payer is left to choose what religion he wishes to maintain, there are certainly the solid advantages of justice and liberality combined; but it labors under inconveniences, which more than counterbalance all its good; for if the parishes be small, and ministers of every denomination be settled in each, which the plan supposes, the charge of maintenance will be too great for the country; but if the parishes be large, the central

place of religious assembly will be too far from the residence of many, who would, if they could, resort to it. Besides, where the pecuniary success of the teachers is made to depend on the number and wealth of their followers, jealousies will arise, and a proselyting spirit be introduced, so mixed up with views of private gain, as cannot fail to demoralise the clergy, and bring religion into disrepute.

If, then, religion cannot be upheld without a clergy, nor a clergy be supported without a compulsory provision, nor a compulsory provision without the preference of one sect, nor the preference of one sect without the introduction of a test,—an ecclesiastical establishment may be defended, if all the preceding propositions be proved satisfactorily; otherwise, not.

It has been already shown that the preference of one sect has a tendency to introduce a test; but if there be a national religion, a test must exist; for without it, there would be no state religion at all.

But this necessity has unfortunately led to acts not necessary, though necessity has ever been the pretence for increasing both the number and limits of such barriers for the protection of a state religion. True it is that by the establishment of such barriers tranquillity is produced; but their evil is not little, as they tend to check inquiry, violate liberty of conscience, and lay a snare for the clergy, by holding out temptations for prevarication; and though confessions of faith may express the opinions of a church at one time, yet, from the changes which take place in men's minds on religious subjects, they come at length to contradict the very doctrines of the church which they profess to contain, and to perpetuate the proscription of sects, from which danger can be apprehended no longer.

Hence, though tests cannot be abolished as long as a state religion exists, they ought to be as few and simple as possible, and adapted to the continual

changes in the sentiments and circumstances of the church, nor go beyond what necessity demands. For instance, if the promise of conformity to the state religion can prevent the confusion arising from non-conformity, stricter subscriptions ought not to be required; or if engagements not to preach certain doctrines can secure to the teaching of religion as much uniformity as is necessary for edification, confessions of faith ought to be converted into articles of peace.

The division of the country into parishes, and giving to each parish a minister, is found in every church establishment, how much soever they may differ on other points; of which the most agitated relates to the question, whether the clergy should be as equal in their temporary, as they are in their spiritual powers. The system adopted in the English church, of different orders and emoluments, is defended on the reasons following: 1. that it produces tranquillity amongst the clergy themselves; 2. that it corresponds with the gradations in civil life; 3. that it provides, as instructors, for each rank in society, a spiritual order, equal to their own temporal one; and, lastly, that it acts as an allurement for men of talent to enter the profession, and as a stimulus, when in it, to continued exertions.

Wherever a state religion is adopted, there must needs arise the question touching the toleration of dissenters, and the justice of imposing civil restraints on account of religious differences. But this cannot be decided on, till another be previously settled, whether the legislature possesses any right to interfere in matters of religion.

They who contend for the social compact, as the foundation of civil government, are at liberty to contend, that as religion neither did nor could form a part of such compact, the legislature could not then, nor can it now, take cognisance of matters left undecided. But we, who reject that theory as false in fact, and

mischievous in its consequences, are precluded from setting up this distinction between civil and religious rights and duties; and, as we ground all government on the will of God, as evidenced by general expediency, we must confess that the power of the legislature is confined by no such limits, and that its interference may and must take place, if general utility demand it.

Again, it has been said that religion, pertaining to the interests of a life to come, lies beyond the province of civil government, whose office is confined to the affairs of this life alone. We reply, that when the laws interfere with religion, they do so only where religion itself is temporal in its objects; for, though they cannot, whatever they may pretend, affect the salvation of the soul, they may deprive the body of liberty, and even of life, and inflict any pains and penalties on account of religion, provided such acts are deemed necessary for the common welfare. Besides, as the precepts of religion may be so construed as to extend to all the offices of life, the exemption of religion from the control of law would exclude civil government from all authority over the subject; nor would religious liberty then be, what it is, similar to civil liberty; that is to say, not an immunity from all restraint, but only from so much as conduces to the public good.

Still it is right, say our opponents, to obey God rather than man. But nothing that we have said encroaches on the truth of this maxim. On the contrary, we are ready to confess, that the right of the law to ordain, and the duty of the subject to obey, may, in matters of religion, be different, and must be so, as often as they proceed from different views of the Divine Will. Hence, if the law should dictate the object or the mode of worship, or require an assent to doctrines different to what the subject believes God has already settled, or contradict what he has de-

clared to be true; whatever plea the state may allege to justify its edict, the subject can have none to excuse his compliance; and this rejection of the authority of law is justified, in affairs temporal as well as spiritual, where the edicts of the state are repugnant to the commands of God.

But if the law may and must interfere with religion, when such interference conduces, in its general tendency, to public happiness, it may be said, as salvation is the object of highest interest to man, to advance that object is to promote, most effectually, public happiness; and, consequently, the legislature ought to interfere, and enforce the reception of that religion which it deems most acceptable to God. Thus, a popish king, for instance, who believed that all heretics will be damned, would be bound to force his subjects to adopt the Roman Catholic religion.

As this inference seems to be fairly drawn from the principle here laid down, relative to the foundation of civil authority, it must be successfully disposed of, or our theory must be given up as false. The force of the inference, however, is only in appearance, and fails in reality, from the neglect shown to a very pertinent clause in the premises, touching the general tendency of a law compulsory on religious points. For, be it remembered, that in reflecting on such general tendency, the legislature is bound to consider, not only whether the religion in question be the best for the subject, but whether the method of accomplishing the end in view by such interference, would, if adopted generally, tend to increase the happiness of man, by more effectually securing his salvation. Hence, if the legislature should perceive that, although a compulsory adoption might advance a true religion in one country, a similar exercise of power would retard it in many others, the general bad consequences of an obstruction to truth, arising from the extension of the rule, must, on our theory, cause its rejection,

even in cases where only the good consequence of promoting truth would follow from its adoption. The difficulty here, as elsewhere, arises from the conflict of particular and general consequences.

Bearing then in mind that it is the general tendency of the measure, that fixes on it the character of right or wrong, we proceed to inquire what is the kind or extent of legislative interference in matters of religion that can tend to increase human happiness.

Now there are two maxims of great use in regulating our conclusions on this head; 1. that any form of Christianity is better than no religion at all; and, 2. that, of different systems, the truest is the best.

Of these propositions, the first will hardly be disputed; for as every modification of Christianity holds out the rewards and punishments of a future state, as dependent on good and bad conduct in this life, how much soever the impressions of such hopes and fears may be combined with errors and superstitions; still he who acts under them is more likely to advance public happiness and his own, than he who believes in no religion at all.

The second proposition is founded on the influence of religion, as affecting the assurance of a future state. Now this influence can belong only to a true religion; for though a religion not true might be framed, [as among the Greeks and Romans,] to answer the purposes of political society, still it must want, what a true one possesses, the assurance that God will regulate his judgments by the rules of conduct which it contains; and, wanting this, it wants every thing in the eye of him, who acts solely with a view to a future judgment. Since, then, this assurance appertains, not to the religion most commodious, or the most sublime, or best suited to the form of civil government, or best able to uphold its power, but to that only which comes from God; we may fairly assert that the true religion is, by its very truth, independent of all

political or other extrinsic considerations, intrinsically the best.

From the first proposition this inference is fairly to be deduced; that when the legislature establishes some form of Christianity, it exercises an interference, whose tendency is to promote general utility; for even if that particular form be corrupt or erroneous, it is better than no religion; which must be the result, if no religion be established by the state.

But though the legislature thus possesses the right to establish some religion, the question still arises, whether the religion so established should be the one which the chief magistrate would prefer, or some other which he believes the majority of the people would rather adopt. Now, as in this question it must be assumed, that it is an equal chance which of the two religions is the true one, the decision must turn on which it is most expedient to adopt. Now, as it is more conducive to general happiness that the people should possess a religion they like, than be forcibly converted to one they hate, it is the duty of the chief magistrate to yield rather to the feelings of the nation, than to force his faith on the people.

By an application of the same principle, the case of dissenters may be determined correctly.

Toleration is of two kinds; partial, when it allows dissenters to exercise their religion unmolested, but excludes them from offices of trust in the state; complete, when religious distinctions do not interfere at all with civil privileges. The expediency of toleration, and, consequently, the right to demand the free exercise of religion, is deducible from the second of the propositions proved above, that the perfection of a religion is its truth alone. The discovery, consequently, of truth is the end to which all regulations touching religion ought to be directed. Now, every legislative act, which enjoins silence and suppresses inquiry, is adverse to the progress of truth; as it em-

powers to one set of men to determine a question, which can be better settled by the researches of individuals; and as truth can be elicited only by discussion, whatever prohibits discussion, obstructs the attainment of truth, and interferes with what it is every man's interest to know. In religion, as in other subjects, truth must prevail; and if there be in the same country different religions, and men be left to make their choice unfettered by law, the religion most true will be eventually adopted, and the more rational will gradually take the place of the less rational, without even the ceremony of a reformation. If popery, for instance, and protestantism were permitted to dwell quietly together, papists would become protestants, not, perhaps, in name, for the name is commonly the last thing changed; but they would become more enlightened, and insensibly incorporate into their own creed many protestant tenets, as well as imbibe a portion of the spirit and moderation of the reformed church.

But though the expediency of toleration is founded chiefly in its tendency to arrive at truth in the all-important question of religion, there are still other considerations in its favor, not to be overlooked: 1. to confine the subject to the state religion is a needless violation of liberty; 2. persecution, so far from producing a change in opinion, only tends to root the opinion stronger; 3. morality is injured by the temptation held out for hypocrisy; 4. infidelity is fostered in secret by the forced imposition of a religion, whose doctrines men cannot believe and dare not examine; and, lastly, Christianity is brought into disrepute by making it the author of cruelty and crime.

By toleration is here meant the permission to write and print all books of serious arguments, but not of ridicule and invective, on religion; because the latter, appealing solely to the passions and not the judgment, has no tendency to advance the investiga-

tion of truth; and while it stays not to distinguish between different religions, it destroys alike the influence of all.

Whether dissenters ought to be admitted to public offices, without which toleration is not complete, has been doubted with some show of reason; and it has been urged, that if certain religious opinions be incompatible with the functions of civil government, they fairly disqualify those, who maintain them, from any share in its administration. For instance, some enthusiasts hold that Christianity enjoins a community of goods: how, then, could one of this sect be an unprejudiced judge in questions, where the right to the exclusive enjoyment of property might be claimed? or could a military command be imposed on a Quaker, who believes it an unchristian act to take up arms even in self-defence? But as this refusal to bear arms is the only case where the tenets of religion are found to incapacitate men for the service of the state, the assertion that a mere disagreement in religion is sufficient to unfit men to act together in public stations, may be denied; and till some argument, founded on theory or practice, be adduced in its favor, it may be met by a counter-assertion, that no reason can be assigned, why men of different religious opinions should not sit on the same bench, deliberate at the same council-board, or fight in the same ranks, as well as men of different opinions on any controverted topic of philosophy, history, or morals.

There are, however, two cases, where tests may, if ever, be defended:—

1. When two religions are contending for establishment, and there appears no way of settling the question, except by giving a decided preference to one. But even this should not be done without some scruples: for if those, who at one time are the dissenting minority, eventually become equal to or greater than

the previous majority, the establishment ought to be modified or changed; or if the different sects be so equal, as to make the preference of one an act of injustice to all the rest, some plan similar to the one described above, as being in practice in the United States, ought to be adopted, even with all its imperfections. On other occasions, the establishment agreeable to the majority will be able to maintain itself. If, however, a test be with justice applicable at all, it ought to be applied to the chief magistrate, whose power might otherwise change or destroy the established religion, even in opposition to the will of the people.

2. When disaffection happens to exist in the country, connected with certain religious opinions. Now, as the state has an undoubted right to refuse trust and emolument to those who are seeking its destruction, if the generality of a religious sect be the disaffected party, and if the government can discover its enemies only by interfering with their religion, it may justly exclude that disaffected sect from offices of trust and authority. But even here it is not the religion directly that is excluded, but the political principles connected with it; nor would religious tenets be held as a test of political opinions, if the legislature possessed other means equally certain to distinguish friends from foes. Thus, while papists, as a body, maintain the right of the pretender to the crown of England, if there be no way to distinguish the papists who do from those who do not maintain that opinion, the legislature is justified in excluding the whole sect from places of trust and power in the state. But even here the objection is not to popery as a religion, but a mark of Jacobitism; and though it be a fallacious mark, it is still the best, and perhaps the only one that can be devised; nor should it be forgotten, that as political considerations are the cause of this into-

lerance towards the religion, the severity of the laws against the papists[1] ought not to continue one day longer than some visible danger to the state renders such severity necessary.

But it may be asked, why should not the test be rather directed at once against the political principles, than through the medium of the religious tenets? Why, for instance, should a man be required to renounce transubstantiation, before he can be admitted into an office of the state, instead of abjuring, what is the real reason for his exclusion, the pretender's claim? To this it may be replied, 1. that the state does not so much fear opinions as inclinations, which cannot be so easily detected by the affirmation or denial of any abstract proposition in politics, as by a discovery of the religion with which they are connected: 2. that when men renounce their religion, they generally break through all connexion with the fellow members of their former church; whereas such connexion might still be kept up, if only articles on a political question were subscribed to; and thus the state might receive into its service one, who, though not guilty himself of actual disaffection, might aid others who really were so. These answers, however, we merely propose, but do not defend; for the test cannot be defended at all, unless the union between the tenets of the religion and the principles in politics be nearly universal; and, in that case, it matters not to the party, whether the exclusion rest on the grounds of religion or politics, of one or both.

To sum up in a few words the whole scope of the preceding arguments, it will be found, that a comprehensive national religion, guarded by a few articles of peace and conformity, together with a legal provision for the clergy of that religion, and with a

[1] As these laws against papists have been all lately repealed, Paley would have reason, were he still alive, to rejoice that he had not advocated the cause of liberality in vain.

complete toleration of all dissenters, without any other limitation than what arises from the natural union of dangerous political and certain religious tenets, is the most just, and liberal, and safest system, which a state can adopt; since it unites all the perfections which a religious constitution ought to aim at; viz. liberty of conscience, with means of instruction; the progress of truth, with the peace of society; and the right of private judgment, with the care of the public safety.

CHAP. XI. POPULATION AND PROVISION; AND AGRICULTURE AND COMMERCE SUBSERVIENT THERETO.

1. The sole end of all politics is to produce the greatest quantity of happiness in a country; and all that history celebrates, or that attracts admiration, in the strength, glory, and riches of a nation, have no value except as contributing to this end; and when they interfere with it, they are evils not the less real for the splendor that surrounds them.

2. Although we speak of societies as happy or miserable, we speak in reality of individuals alone, who so feel; for the happiness of the whole is made up of the happiness of the parts; and the whole quantity of happiness can be augmented only by increasing the number of the percipients, or the pleasure of their perceptions.

3. Notwithstanding the great diversity in the conditions of men and in the quantity of happiness enjoyed by the same number of individuals, and though cases may be found, where human beings are so pinched by want or galled by slavery, that increase of numbers produces only increase of misery; still, under temperate governments, the quantity of happiness will vary as the number of the inhabitants; that is, if the inhabitants be doubled, the quantity of happiness will be doubled also: and though, under circumstances less

favorable, the proportion of enjoyment may fall short of the number of persons to share it, still any great excess of numbers will usually carry with it a preponderance of happiness. Hence, it may be assumed, that ten persons possessing a competence will share amongst them more happiness than five can do under every advantage of affluence.

Since, then, the quantity of happiness in a country is to be estimated by the number of its inhabitants, the greatest evil a state can suffer is the decay of its population; and the improvement of it should be the first object of political economy.

This paramount importance of population is the more necessary to be insisted on, as false estimates and fantastic notions of national grandeur are perpetually drawing off the attention of statesmen from this, the true interest of the country, with which no measure of real utility can, after all, interfere; because whatever tends to make a people happier, tends to render them more numerous.

In the fecundity of the human, as of other species of animals, nature has provided for an indefinite increase. In proof of this, we may appeal to the increase of mankind from a single pair; and even in the space of twenty years the population of a country has, under favorable circumstances, been found to double itself; while the waste of life, occasioned by wars, plagues, and earthquakes, is repaired in a very short time. With such a tendency, then, to increase, whence is it that population is ever checked? The answer is, that population must stop when the soil will no longer yield the food necessary for the superabundant mouths. But this is not the actual check, for rarely have the people become so numerous; while the soil, so far from having been compelled to yield all it could, has been seldom cultivated so as to yield one fourth of what it would do, if every field of equal quality with those round London, for instance, were made by simi-

lar management to yield an equal produce. By uniting, therefore, the ratios of the fecundity of the species and the capability of the soil, it will be seen that population would have advanced much further than it has done, but for the imperfect cultivation of much land, and the total neglect of as much more; to say nothing of the restraints imposed on marriage by the artificial frame of civilised life.

The fundamental proposition on the subject of population is, that, wherever subsistence can be procured, sufficient to maintain a man with a wife and children, as easily as without them, the numbers will increase with a rapidity and extent proportioned to the quantity and facility of subsistence combined.

In this proposition it is necessary to suppose that the man and woman be married: because, 1. in marriage only is the intercourse sufficiently prolific; and, 2. family establishments can alone perpetuate successive generations: for the offspring of promiscuous intercourse are apt to perish from neglect, and are seldom placed where they can raise families of their own. Now, as nature has provided a stimulus sufficient to surmount every impediment to marriage, and to secure all the advantages of such union, provided men are restrained from promiscuous intercourse, it behoves the state, when subsistence becomes scarce, to watch over the morals of the community with unremitting care; since nothing but the instinct of nature, restrained by chastity, will lead men to sacrifice personal liberty, or to support a family, when passions can be gratified without such encumbrances.

It is further necessary to suppose that the facility of obtaining subsistence, suited to the station of the parties, be the same before and after marriage. It is not enough that men's natural wants be supplied; for habitual superfluities become actual wants, and even articles of luxury are only not indispensable. But, though these considerations affect rather the middle

than the lower orders of life, still in both men will rather forego marriage than give up their habitual indulgences; and, consequently, marriages will be neither sufficiently early or general to carry population to its greatest extent. It is in vain to say, that a more simple diet, ruder dwellings, or coarser apparel, will suffice for life and health, or even pleasure. Men will not marry with this encouragement. For instance, country people, accustomed to eat animal food, to drink beer, and to wear shoes and stockings, will not marry to live on roots and milk, and to be clothed in sheep-skins; though these may be all that life or health require, or that contribute to animal enjoyment.

The ease, then, of obtaining, not merely subsistence, but that also which is suited to the man's station in life, is the point on which the progress of population turns. Now, this point is itself regulated by, 1. the mode of subsistence; 2. the quantity of provision suited to that mode; and, 3. the distribution of such provision.

1. The mode of subsistence. In China, where the people reside on the sea-shore, or on the banks of rivers, and live chiefly on fish, the population is said to be excessive; because such food is procured in the greatest abundance, and with ease. So in India, where the natives are confined by their religion to rice and other fruits of the earth, and of which the country produces plentiful crops, the population has become extensive under all the injuries of a despotic, or the troubles of an unsettled government. But should any great change take place in the food of either country, and flesh be substituted for fish in the one and for fruits in the other, the population would diminish, doubtless, rapidly, through the difficulty of obtaining subsistence from a soil ill suited to the production of such new food; and hence in Ireland, the simplicity of living alone maintains a population which could not

exist on the less simple food deemed necessary in England.

From a view of the preceding considerations may be seen the good and evil of luxury.

It is good, as, by supplying employment, it promotes industry and assists population. But the good is more than counterbalanced by its evil: for, by introducing superfluous wants and expensive habits, it increases the difficulty of maintaining a family, without a greater sacrifice, than is agreeable, of personal indulgences; and, as none will marry to sink below their previous station in life, marriages become less frequent, and the population is consequently diminished, by the willing celibacy of males, and the forced celibacy of the other sex.

But though luxury is thus seen partly to promote and partly to check population, it does so only as it is found in the ascending or descending scale of civil life; and though the point may be discovered where its greatest good is alloyed with the least evil, still the discovery is attended with too many difficulties for the result to be stated with precision. It is enough to observe,—

1. That those luxuries are the most innocent in which the greatest number of hands are employed, and where the price of the work exceeds that of the raw material in the greatest proportion.

2. That the evil of luxury is in its diffusion, not in its degree. Its mischief consists, as we have seen, in its tendency to obstruct marriage. Now, as the higher orders are few in number and wealthy, luxury cannot obstruct their marriages; or, if it could, the effects of the obstruction is felt only in a small circle. Hence, it matters not, as regards the consequences, that luxury be ever so great in degree amongst such persons. But when it descends, (as, from the prevalence of imitation, it cannot fail to do) amongst the mass of the people, and, by increasing ideal wants,

diminishes the real power of maintaining a family, it produces evil by diffusion alone.

3. That the condition most favorable for the increase of population is that of the frugal many ministering to the luxuries of the opulent few; because, while the people are thus employed, they obtain all the good without the evils of luxury.

II. The quantity of provision. In this question the extent and quality of the soil being given, the quantity of food requisite for the support of the people in health will depend on its kind. For instance, on the same ground, where animal food can be raised for ten persons, might be grown grain, and other fruits of the earth, sufficient for twenty. The first resource of savage life is in the flesh of wild animals; hence, the number of savages is small, compared with the tract of country they occupy, because such provision is the most scantily supplied. The next step is the rearing flocks and herds of sheep and other domesticated animals, by which the stock of provision is much increased. The third and last is the production of grain and of other fruits of the earth by tillage, whereby the quantity of food is increased still more, and of course the population, which depends so much on the kind of subsistence in general use, that a return from the consumption of grain to animal food is sure to be accompanied by a corresponding decline in the population: at least, no reason so good presents itself for the solution of the fact, that, though in England the produce of the soil has been considerably increased by the enclosure of wastes and the adoption of improvements in agriculture, no corresponding increase has been found in the population, because the consumption of animal food has increased in a still greater proportion; and not only has much land been converted to pasturage, but even grain, fit for the nourishment of men, has been given to fatten sheep and

oxen; and thus, while the quantity of provision has been diminished, even all that is gained by the melioration of the soil is lost by the quality of the produce. Hence it appears, that, as tillage is preferable to pasturage, not only on the ground of its affording a greater quantity of food, but of employing more hands, it is doubly deserving of legislative care in highly civilised states; while pasturage must be the resource of countries less civilised, like the internal parts of Asia, or of nations, like Spain, declining from their former height.

All other things remaining the same, the quantity raised will depend on the means of the occupier and the encouragement he receives.

As regards the means, the tenant ought not to be indigent; for whatever be the natural advantages of the soil or of man's skill, the want of capital cripples every operation of husbandry, and is an evil felt particularly, where farms are subdivided, and leases either unknown, or uncertain in duration.

With respect to encouragement, the true reward is in the profit of the sale. Hence, as the exclusive right to the produce is the only spring of human labor, all that the laws can do is to secure this right, so that every improvement go to the benefit of the improver, and no one share in the profit who does not assist in the production. In this improvement the landlord and tenant are in reality partners; for while the former lends the use of the soil, the latter merely borrows, on the condition of paying a stipulated sum called rent, and of cultivating the land in a certain fixed manner; and both are respectively benefited by the increased produce of the soil, the result of the capital of the one combined with the skill of the other. Now, as this fundamental maxim of uniting the interests of the landlord and tenant is broken through, where the land is held by the clergy, for instance, in right of their benefices, such a system

interferes with the public good, by diminishing, with the means to improve on the part of the tenant, the motive of the clergy to assist in the improvement; who, though they share not in the expense, still obtain a portion of all increased produce, in the shape of increased tithes. This fair ground of complaint can only be obviated by long leases at a fixed rent, which convey a large portion of the results of improvement to the improver, in return for the talent, labor, and capital expended on such improvements.

III. But beside the production, the distribution of the produce is to be taken into consideration. It is in vain that provisions abound, unless every man can obtain a share of them. Now, there is but one universal principle of distribution; that of the exchange of what a man has for that which he wants; and the only equivalents to be offered in exchange for provisions are power and labor. All property is power. Thus property in land is the power to use it, and to exclude others from its enjoyment; and thus money is the representative of power, and its value consists only in its power over persons and things. But such power of property, resulting from civil conventions, is necessarily confined to a few, and is soon exhausted; whereas the power of labor is every man's property, and composes a constantly renewing fund. Labor, therefore, or the produce of labor, is that which most men can alone give in exchange for subsistence. But though the production of provision precedes distribution, yet the quantity of the former is chiefly dependent on the latter; for the quantity raised is regulated by the demand; and this last is again regulated, not by the number of those who want the provision, but of those who have something to offer in exchange, which is equally wanted by the party possessing the produce of the soil.

In this connexion between population and employ-

ment, the latter affects the former directly, as it affords the only medium for the exchange of labor for provision; and indirectly, as it augments the stock of provision by making an increased demand for it in the shape of purchasers, who can give only their labor as equivalent.

Hence the real benefit of trade, whose sole utility consists in its subserviency to increase population, and of such trades in particular as are employed in the production and preparation of various articles of food; and of such likewise, as, in colder countries, supply the next requisite to food—clothing and habitations; by all of which life is sustained and rendered comfortable. But what shall be said of, perhaps, two-thirds of the trades in England, employed on works of no use or value, except in the eye of caprice or fashion? What can be less connected with the sustentation of life than the manufactory of silk, lace, plate, tobacco, and snuff? and yet all of them employ thousands of hands. But, since they add nothing to the stock of provisions, how do they tend to increase population? or how can trade be said to maintain multitudes, when it produces nothing for their maintenance? In like manner, so much of foreign commerce as introduces articles of food and other necessaries, advances population directly, because it adds to the stock of general subsistence: but so little is foreign commerce directed to this end, that were Ireland, as Berkeley said, shut out by a wall of brass fifty cubits high, from all external intercourse, it would still maintain as many as it does at present, and no real comfort be wanting. How then does foreign commerce, unconnected with the importation of articles of subsistence, promote population? The answer to this question will be found in the discussion of another, viz.—Since the soil will maintain more than it can employ, what must be done with the overplus?

They who hold the land by law, and they who possess its produce by their labor, will not part with their property for nothing, or raise from the soil what they can neither use themselves nor exchange for what they want. But, even if they were willing to give away what they could not use to those who gave nothing in exchange, all the mischief of an idle population would arise; and to prevent this, the only way is to employ the superabundant hands in works which the owners of the soil and produce may set a value on, and be anxious to purchase by the exchange of such produce; and thus, while the possessor of food has a demand for his superabundant food, and the possessor of labor a demand for his superabundant labor, the whole society is engaged in occupations conducive to the well-being of all.

In this division of labor, expended on the production of indispensable food or unnecessary comforts, although the former is the one really productive, and the other only instrumental, yet both are equally requisite, though the latter have no object, except to excite artificial wants. Nor does it matter, for purposes of trade, whether the wants be real or artificial, [except so far as the trade in artificial wants is more subject to change, or even to total destruction.] For, if people, by employment, can only find an equivalent to exchange for provision, trade will be carried on as effectually in trifles as in articles of greatest moment; and thus, an empire is supported by tea, states by tobacco, and cities by toys; all of which, though unnecessary, become as useful to trade as the production of food, if the last be raised for the sake of obtaining the others.

But it may happen, that though the grower of food is overstocked with articles of luxury, and refuses, therefore, to exchange his produce for such equivalents, he is still willing to take other articles he is in want of. In this case, such other articles must be ob-

tained by the sale of the preceding equivalents; and he, for instance, who would not take cloth for corn, will take wine, for which that cloth has been bartered; and thus a new trade is opened with foreign countries, and a vent given for the consumption of articles with which the home market began to be glutted.

Thus, as manufactures multiply, agriculture improves; for the greater consumption of the former gives rise to a greater demand, and this again to a greater supply of the necessaries of life, on the part of the latter. Since, then, employment increases the production of food, and the increase of food promotes population, increased employment leads directly to an increase of the people.

Hence, a scale may be constructed to show the relative importance of the different trades, by taking as a measure the quantity of employment each affords.

In this scale the first and highest place is the trade in the exchange of wrought goods for raw materials, as of cotton stuffs for silk, or hardware for wool; because such a trade both gives a vent for labor done, and affords the materials for future employment. The second in the scale is the barter of wrought goods, as of cotton stuffs for silk stuffs, or of hardware for articles that require no further preparation, as of oil, wine, tea, sugar, coffee, &c.; for here the whole advantage is derived from the quantity of labor employed on the exported article. The lowest in the scale is the exchange of raw materials for wrought goods, as of wool for velvets: for as this gives no employment either previous to the exportation, or subsequent to the importation of the articles, it diminishes the industry that ought to be exercised both ways, and so far is unfavorable to population, which employment alone promotes. Hence, too, of different manufactories, those are the most beneficial, where the price of the wrought article exceeds that of the raw material in the greatest proportion; for this excess

measures the quantity of employment, in which alone the real utility of trade consists. Hence, the exportation of corn is the least advantageous part of foreign commerce, [because there is the least labor expended on the raw material, after it is once produced;] and as the exportation of corn is the least advantageous kind of trade, no nation will reach the maximum of population, the result of successful trade, if its principal commerce consist in the exportation of articles of food, or even of pottery, die-woods, and other timber, which occupy ground, that should be covered with the materials for human food.

Hitherto, we have considered a country as being fed by its own produce; but the same reasoning may be applied, *mutatis mutandis*, if the country obtain its subsistence from other countries by the exchange of articles as well suited to its soil, as the growth of such food is suited to the soil of such other countries. For instance, when the Dutch raise madder, or the Americans tobacco, and exchange it for food or cloth, the cultivation of madder and tobacco becomes as necessary to their subsistence and employment, as if they actually grew the corn or made the cloth; or, in other words, it is not the article, but the object for which it is grown, that promotes population by giving birth to employment.

From a view of the preceding principles, it will be seen what may be expected to arise from the following questions connected with political economy.

1. Emigration.—This is the result of either a superabundant population, or of a deficiency in the means of subsistence drawn from the soil. A country, whose soil is not exhausted, may continually, from the increase of its population, send out emigrants, and yet remain constantly full. In this case, as emigration indicates no internal decay, but rather a fecun-

dity in the powers of increase, it ought not to be discouraged. Still less ought any impediments to be thrown in the way of emigration, where a sense of insecurity in life or property induces persons to leave their country; for even if it were practicable to adopt any check, the same causes, which drive them out, would prevent their increase at home. Nor, if people wish to leave their country for other reasons of a mere personal kind, is it advisable to check emigration; for the numbers of such will be found to be very few, from the natural attachment which people feel for the land of their fathers, and the difficulties attendant on emigration, compared with the greatest privations they sustain at home. Thus emigration, which is usually deemed a symptom of decay in a state, is at best but an equivocal sign; for it may attend a condition of perfect health.

II. Colonisation.—In our view of the subject, this can be considered only in its tendency to augment the population of the parent state. This tendency will be best seen by supposing a fertile, but uninhabited island, to lie within reach of a country already in the possession of manufactures. Now, if a colony were sent to the former from the latter, and protected by the mother country, the new settlers would of course cultivate the soil, and exchange its produce with the manufactures of the parent state; and as long as hands were few, and lands cheap and fresh, they would find it a better policy to raise food than to foster manufactures; while the mother country would be benefited by the increase of employment, buying provision, and population. But as soon as the new country ceased to remit provision, although the parent state would receive less advantage, still, by its exportation of wrought goods, (no matter how paid for) it would receive some benefit, and its population would

advance, though in a diminished ratio. Whatever, therefore, may be the prejudices against colonisation, the system is founded on national utility; for by no other method can new countries be peopled, or, during their infancy, be supplied; and the error, into which the English have fallen, is not so much in the original formation of colonies, as in their subsequent management; and in not perceiving when the parent state can neither claim nor enforce continued authority.

III. Money.—Although gold and silver neither feed nor clothe man, nor can in all countries purchase the necessaries, much less the superfluities of life, still has money a tendency, where it abounds, to augment population.

This effect, though visible to observation, is not easily explained, except by referring to the maxim, that 'population is promoted by employment,' of which money is both the cause and indication: the former, when by flowing into a country it requires goods to be given for it; the latter, when by remaining in a country, it shows that the sale of manufactures is confined to the home trade; while the accumulation of money is merely the measure of the value of the labor and goods combined, which have already been in existence, and are either wholly or in part consumed. But this definition holds good, of course, only where labor has been expended on the goods; for, without such labor, the possession of any quantity of the precious metals has no effect on population, because it does not call employment, on which population is dependent, into action. When, however, money is applied as a stimulus to industry, it becomes a direct cause of an increased population, by facilitating the means of subsistence. Now, the ease of subsistence depends not on the price of labor nor of provision, but on the proportion one bears to the other; and as this proportion is, by the influx of money, varied in favor

of labor, by raising its price, previous to its raising likewise the price of provision, the ease of subsistence is increased, and, consequently, the population.[1] But when this influx of money shall have introduced a rise in the price of provision, equal to the previous rise in the price of labor, the laborer no longer gains by the increase of his wages. Hence it appears, that it is not the quantity of specie collected in a country, but its continued influx, which advances population, by giving increased employment. Now, as the continued import of specie benefits a country, so must its continued export injure it; a fact, the knowlege of which has led to the introduction of the phrase, 'the balance of trade,' by which is meant the difference of value between the imports and exports of two countries trading with each other; and which value being measured in specie, indicates that the balance of trade is against the country, obliged to pay for such difference by the export of its specie.

IV. Taxation.—As taxes take nothing out of a country, nor diminish its stock, but merely vary its distribution, they are not necessarily prejudicial to population. But though the common fund is not lessened by taking from one to give to another, nor any evil

[1] As the arguments, by which Paley proves this assertion, are, if intelligible, unsatisfactory, they scarcely admit of condensation, and are therefore given entire below.

'When money is brought from abroad, the persons, into whose hands it first arrives, do not buy up provision with it, but apply it to the purchase and payment of labor. If the state receives it, the state dispenses what it receives amongst soldiers, sailors, artificers, engineers, shipwrights, workmen; if private persons bring home treasures of gold and silver, they usually expend them in the building of houses, the improvement of estates, the purchase of furniture, dress, equipage, in articles of luxury or splendor; if the merchant be enriched by returns of his foreign commerce, he applies his increased capital to the enlargement of his business at home. The money ere long comes to market for provision; but it comes thither through the hands of the manufacturer, the artist, the husbandman, and laborer.'

done as long as the tax-payer and tax-eater, by making an exchange of provision and employment, are mutually benefited; yet mischief must arise, if the money raised by the tax pass from the industrious to the idle, and from the many poor to the few rich, or be expended on objects, where the few are, and the many are not, interested. For instance, a tax on coaches, to be laid out in the repair of roads, would benefit many at the cost of few; but a tax on cottages, to be expended on coaches, would benefit a few at the cost of many. The mischief, then, of a tax is to be estimated not so much by its amount, as by a consideration of the consequences which will result from it. Thus a tax on the growth of corn and other food, though ever so slight, is mischievous, as diminishing the means of subsistence, and, consequently, checking population. On the other hand, taxes on the luxuries of life are beneficial, not so much as sources of revenue as instruments of policy, in checking the vices to which luxuries lead, and thus preserving what a direct tax on vices themselves would destroy—a perception of their guilt, which would seem to be commuted by the imposition of a tax; and thus, while drunkenness is not taxed, spirituous liquors, which lead to it, are properly subject to an impost.

But, though taxes may in some cases be beneficial, yet their general tendency is detrimental to the state: for suppose, that on a society of nine families, possessing barely the means of subsistence, a tenth be quartered, to be supported by the contributions of the nine, it is evident that all the ten must perish; for as they had only enough for subsistence previous to the arrival of the tenth family, they must, after its arrival, have less than enough, and must, therefore, perish. Nor can it be said in answer, that, as nothing is taken out of the stock, the common fund remains the same; for even then the share of each family does not remain the same. Still less can it be said, that the sup-

port of one family is any recompense to the society, for even a diminution in the subsistence of the other nine. Nor, lastly, is the real injury less, though it be more concealed, if the tenth be maintained, not by a direct contribution, but an impost on articles of necessity, consumed by the nine; for it is not the mode of payment, but its amount, that produces the mischief. It is true, that the supposed case is an extreme one; yet, the evil is not the less in principle, though its effects are made more visible by the adoption of a magnifying medium; for, though such societies might not absolutely perish from want, yet the population would diminish, from the less frequency of marriages amongst them.

Some distinction may, perhaps, be made between the mischief of an old or new impost; since the proportion between the supply and expense of subsistence, which the tax had once disturbed, may have recovered itself, either by an increase of employment, or decrease in the expense of living. But this distinction does not really touch the principle; for every old tax was once new, and did at first (whatever it might do afterwards) produce all the mischief of a new impost; and from which there is an escape only by one of two methods, both equally detrimental to society, viz. by contracting the wants of life, and thus diminishing employment, or by raising the price of labor, and thus checking foreign trade. Hence, a nation burdened with taxes must be always undersold by a nation not so burdened, unless the former possess advantages which the other neither does nor can possess. But independent of the direct mischief of taxation, there are others no less detrimental, arising from the abuses inseparable from the disposal of public money: for while a part of the revenue is expended on the nobility and gentry, to gratify their vanity or maintain their influence, it is taken from the industrious to be given to the idle; and while it increases the weight of the burdens on

the state, it sacrifices the necessities of the many to the superfluities of the few; and as it encourages no active employment, it makes no satisfactory return to the people at large, from whom it is drawn, and for whose benefit it was imposed.

In the imposition of taxes, a wise statesman will continue so to adjust them with the view to population, that the least obstruction possible be thrown in the way of the means of subsistence. Nor is it necessary that an impost be accurately proportioned to the circumstances of the payers, unless it be shown that such proportion would better promote the general conveniency of subsistence; a point the most likely to be attained by fixing a higher ratio on the higher incomes, than by an equal rate on all. For the question is, not what men have, but what they can spare; and it is evident that a man with 1000*l.* a year can more easily give up 100*l.*, than one with 100*l.* can give up 10*l.*; for in the higher class the sacrifice is of superfluities, in the lower of necessaries. Now, as the population is kept up by the numerous marriages of the lowest rank in life, their ease of subsistence is of more importance to the state than the comforts of the higher and less numerous order. But whatever be the proportion which expediency directs, it can never be attained by a single tax; for no single object of taxation can measure the ability of the payer with sufficient exactness. Hence, the necessity of so varying the imposts, that all may pay in their due proportion. Thus, a tax on land is properly counterpoised by a tax on houses, which falls chiefly on the inhabitants of towns. Distinctions may therefore be fairly made, in the shape of abatements, between persons married or single, with more or fewer children, and between tillage and pasturage, and, generally, in favor of productive industry, rather than of that which is merely instrumental; while the heaviest burden should be thrown

on wealth unemployed, or employed on mere superfluities.

v. Exportation of bread corn.—This, though tending apparently to reduce population by diminishing the quantity of subsistence, is still perfectly justifiable, when the produce is so abundant, as to leave to the grower no chance of remuneration except by exportation. The plan, however, should not be adopted, unless enough, and even more than enough, be left in the country; for so variable is the produce of the soil in the growth of bread corn, that a year of plenty may be followed by many years of scarcity; while, on the other hand, the very steps taken to guard against such deficiency may lead to redundancy, as ruinous to the grower as the deficiency would be to the consumer. Hence the necessity of checking and permitting exportation according to circumstances. In one case only can a country always export beneficially to itself; where it always grows more than it consumes, and grows it with the view to obtain, in exchange for its corn, articles from other countries, at a less price than it could make them at home.

vi. Abridgment of labor.—The question, Whether machinery, which abridges labor, be detrimental or not to the population of a country, depends on the answer to be given to a previous question, Whether machinery diminishes eventually the quantity of employment. That it does so at first is evident; for if one man, with the aid of a machine, can do as much as ten without it, nine persons will be discharged immediately; but if the machine either arrests the falling off in the previous demand, or increases the demand in future of the manufactured article in a greater proportion than it contracts the number of hands employed, its introduction is a positive benefit.

To this may be added, as collateral benefits, 1. the stimulus given to employment in the manufacture of the machine itself; for whenever the cheap power of machinery succeeds in one place, it must be quickly adopted in all others, where the same manufacture is carried on, through the fear of the loss arising from the use of the dearer power; 2. the increase of profit to the party who first successfully introduces a substitute for labor; 3. after the secret, if it be one, becomes known, still additional employment will be furnished by the greater demand, resulting from the greater cheapness of the article; and, lastly, when coarse goods become so cheap as to lose every attraction, those of a finer quality are sought for, and thus a new field for employment is laid open; [for as the coarse goods sink in price, those in the scale above must also sink proportionally, and come more within the reach of consumers in general.]

By a careful review of the preceding facts and arguments, it will be seen how far laws can interfere with the increase or decrease of population: I say how far; because, in questions of political economy, more is often expected from laws than they can in fact perform. Laws may imperfectly restrain luxury and dissipation, the chief impediments to marriage, and, consequently, population; but they cannot regulate the real or artificial wants of nature and fashion; nor can they lead, much less compel, men to marry, to sink themselves in the scale of society. They may protect the fruit of a man's labor, but cannot make a freeman labor; nor cause corn to grow, or trade to florish, without toil or talent: while, in spite of all laws, the expert workman will be preferred to the inexpert, and the honest servant to the rogue; and as trade is based on principles of supply and demand, and on rivalship in quality and price, every attempt to interfere with it in any way, by the operation of laws at variance with such principles, is sure to be defeated by the spirit of

commerce, ever on the watch to find new sources of profit, and too subtle to be confined by legislation; and, perhaps, the only case where laws can interfere with justice, though not often with effect, is in the prevention of fraud.

As regards the increase of population, the legislature may interfere beneficially by encouraging agriculture, through the operation of laws adjusted to these two rules:—1. that the occupier possess all the power over the soil necessary to its perfect cultivation; 2. that the whole profit of improvement be secured to the improver.

1. Property in land is the power to use it. Now, as it matters not to the public who may possess the power over the soil, if it be only properly cultivated, it matters not whether a man possess ten or ten thousand acres; for the same perfect cultivation will create as much employment, whether the ten thousand be the property of one or one hundred persons; but it does matter very much, that no restraints be imposed on a system of perfect cultivation. Hence the impolicy of tenures, which impose a perpetual sterility on the land, in the shape of rights of common, which precludes each proprietor from improving his share, without obtaining (what cannot always be done) the consent of the rest. Manorial claims also, by which the surface belongs to one person and the soil to another, interfere to prevent either owner from stirring a clod without the other's consent. Other restraints are likewise imposed on the perfect cultivation of the land, by leases limited to a few years, which destroy both the motive and means for improvement. Now, as in all these cases, the owner wants that power over the soil requisite for complete cultivation, the legislature ought to interfere to give him that power, by compelling parties to forego, for an equitable compensation, private interests for the public good. But, though every encouragement should thus be given for the

enclosure of waste lands, yet the conversion of lands in tillage into land for pasturage ought to be as sedulously discouraged.

2. As every law of property, which lets in those to participate in the profit of an improvement, to which they have contributed nothing, is prejudicial to the interests of agriculture, all manorial customs, which subject the occupier, on the death or change of the lord, or any other contingency, to a fine apportioned to the improved value of the land, ought to be abolished, or at least to be so regulated, as to have a less tendency to check improvement. But of all systems fatal to a perfect cultivation of the soil, none is so noxious as the imposition of tithes; which press with a heavy hand on that very industry which is most beneficially employed in the raising of food, and on that very mode of cultivation which raises the greatest quantity of it; and whose payment is exacted in a way the most galling to the payer, as it forces him to reflect, that when many years of toil, and large sums of money have been expended on the improvement of the land, at the very moment when he sees his crops ripening to repay his expenditure, and waiting only for the reaper's sickle, he is compelled to give up one tenth of his harvest to a priest, from whose hands he can scarcely escape, even by substituting pasturage for tillage, no less to his own loss than to the public detriment.

To remedy this evil the legislature might interfere beneficially, by commuting tithes into corn rents; and thus, at one and the same time, secure to the tithe-holder a complete and perpetual equivalent for his interests, and leave to industry its free operation and full reward.

CHAP. XII. WAR AND MILITARY ESTABLISHMENTS.

Because the Christian Scriptures describe wars as crimes or punishments, some Christians have deemed it unlawful for a Christian to bear arms. But if self-defence justify a single individual in carrying weapons, the same cause will justify many in uniting their forces for a similar purpose, and in resigning themselves to the guidance of a common will, even though such union be directed to destructive purposes. Hence, though war is ascribed in Scripture to lawless and malignant passions,[1] and numbered amongst the direst calamities of a land, the profession of a soldier is no where condemned; and even in the reply of John the Baptist to the soldiers, 'Do violence to no man, neither accuse any man falsely, and be content with your wages,'[2] we find only a caution not to indulge in the vices of their profession; and so far from an intimation, that to gain the kingdom of God, they must renounce it altogether, the very precept, 'Be content with your wages,' supposes their continuance in it; nor can we discover in the history of Cornelius,[3] the first Gentile convert to Christianity, that his profession of a Roman soldier was objected to, or his continuance in it considered as inconsistent with his new character; and though little stress may be laid on the fact, still it is worthy of notice, that Christ pronounced that memorable eulogy of a Roman centurion, 'I have not found so great faith, no not in Israel.'[4]

It must, however, be confessed, that in applying the principles of morality to the affairs of a nation, a difficulty presents itself, in finding that, contrary to our principles, the particular consequence sometimes exceeds the value of the general rule. In the transactions of individuals, no private advantage, arising

[1] James iv. 1. [2] Luke iii. 14. [3] Acts x. 1. [4] Luke vii. 9.

from the violation of a law, can compensate the general disadvantage of such violation. But this maxim, in the case of nations, sometimes admits of doubt. Thus, though promises between individuals ought to be kept according to the laws laid down above, yet when the rigid adherence to a treaty would nearly destroy a nation, the magnitude of the particular evil leads us to doubt the obligation of the general rule; doubts which moral philosophy cannot solve; because as no rule of morality can be so rigid as not to admit of exceptions, cases of doubt must arise, from the impossibility of previously comprising such exceptions within a general rule. But it will be said, that if treaties are to be held no longer binding than suits the convenience of either party, a general distrust will arise respecting the faith to be put in any treaty, and mankind be thus shut out from almost the only method of preventing or putting an end to war. Still, we reply, that if a case presents itself, where destruction, or something like it, would be the result of a rigid adherence to a treaty, a question may arise respecting the obligation to act up to its spirit and letter, resulting from the conflict of general and particular consequences, [as in the case of promises extorted through fear.]

As between individuals it is impossible to ascertain every duty by an immediate reference to public utility, not only because such reference is oftentimes too remote for the direction of private consciences, but because a multitude of cases arise, in which it is indifferent to the general interest by what rule men act, though it be absolutely necessary that they act by some known rule; and as certain positive constitutions are therefore established in every society, which, when established, become as obligatory as the original principles of natural justice themselves; so, likewise, it is between independent communities. Together with those maxims of universal equity common to

states and to individuals, and by which the conduct of both ought to be adjusted; there exists amongst nations a system of artificial jurisprudence, under the name of 'the law of nations.' In this code are found the rules, which determine the right to newly discovered countries; those which relate to the protection of fugitives, the privileges of ambassadors, the rights of neutrality, the distance from shore to which the immunities of neutral ships extend, the distinction between free and contraband goods, and a variety of subjects of the same kind. Of these laws, the principal part of what is called the *jus gentium*, it may be observed, that they derive their force, not from their internal justice, for many of them are arbitrary, nor yet from the authority by which they were established, for the greater part have grown insensibly into usage, without any public compact, or even known original; but simply from the general utility of conforming to some rules, where nothing but regulations known previously can prevent disputes and their destructive consequences. For instance, the sovereignty of newly discovered countries is given to the prince or state, whose subject makes the discovery; and who takes possession of them in the name of his sovereign at home, by displaying his flag on the desert coast. Now nothing can be less consonant to reason than the right which such discovery and idle ceremony confer on the country of the discoverer. Yet the claims to newly-discovered countries can hardly be settled between different nations, without some positive rule; and as such claims, if left unsettled, would prove sources of ruinous contentions, the rule proposed, however arbitrary, if acquiesced in, becomes a precept of natural justice, because founded on general utility: and a prince, who should dispute this rule, and by such dispute disturb the tranquillity of nations, and lay the foundation of future disturbances, would be little less criminal than he, who breaks the public peace, by a violation of engage-

ments, to which he had himself consented, or by an attack on those national rights which are founded immediately in the law of nature, and in the first perceptions of equity.

War may be considered with a view to its causes and to its conduct.

The justifying causes of war are, deliberate invasions of right, and the necessity of maintaining such a balance of power amongst neighboring nations, that no single state, or confederacy of states, may be strong enough to overwhelm the rest. The objects of a just war are, precaution, defence, or reparation. In fact, every just war is a defensive war, as it supposes an injury perpetrated, attempted, or feared.

The unjustifiable causes of war, are the family alliances, or the personal quarrels of princes; the internal disputes of other nations; the extension of territory, or of trade; or the weakness of a neighboring or rival state.

There are two lessons of rational and sober policy, which, if it were possible to inculcate them into the counsels of princes, would exclude many of the motives of war.

The first is, that the true glory of a prince consists, not in his extent of territory, but in his producing the greatest quantity of happiness in it. The enlargement of territory by conquest is not only an unjustifiable ground of war; but even, if obtained, frequently not desirable: for the larger the territory, the wider the frontier to defend; more claims to vindicate; more enemies to encounter at home and abroad; more establishments to keep up, and more taxes to pay. But if no part of the country of the victors or vanquished be benefited, (and in such forced unions there is neither security to the one nor enjoyment to the other) the empire can but appear to be enriched or strengthened, when every part is poorer and weaker;

or were it true that the empire is ennobled by such exploits, the splendor of renown is purchased too dear, when the power, which enslaves one part of a kingdom, only impoverishes another. Triumphs of this kind, as they are miscalled by flattery, ought to be objects of execration rather to mankind at large, and even to the victors themselves.

There are, however, two cases where an extension of territory may be useful to both parties.

1. Where an empire reaches thereby to its natural limits. Thus the British Channel is the natural limit to England and France respectively. Hence, if France possessed any part of England, or England any part of France, the mutual recovery of what belongs naturally to both would be, not a cause, perhaps, of war, but a proper use of victory.

2. Where several contiguous states exist, too small to defend themselves individually against powerful neighbors, conquest may effect the purposes of confederation better than voluntary union. Thus, the valor and fortune of an enterprising prince, who, by the destruction of the heptarchy, united England into one monarchy, benefited alike the victors and vanquished, by giving that strength to the whole, which it wanted in its parts; and thus preventing each member of the heptarchy from becoming a prey to foreign enemies. So the union of England and Scotland, which converted two quarrelsome neighbors into friends, would have been a happy conclusion to hostilities, had the event been the result of a war, and not, as it really was, of amicable convention, at a time, when, by the meeting of the two royal families of France and Spain in one race, it became no longer safe for England and Scotland to remain separate.

With the exception of these two cases, a third can scarcely be adduced to prove that the extension of empire is useful even to the conquerors.

The second rule of political prudence, so far as it relates to war, is 'never to pursue national honor as distinct from national interest.'

We confess that it is often necessary to assert the honor of a nation for the sake of its interest; for concessions, which betray weakness, though on trifling points, invite greater demands and more serious attacks. But we say, that when points of honor are likely to lead to war, they must be estimated with reference to their utility, and not by themselves. 'The dignity of his crown,' 'the honor of his flag,' and 'the glory of his arms,' are very imposing terms in the mouth of a prince; but the desires they give rise to are insatiable; for in kings the pursuit of honor, unrestrained by prudence, becomes a madness; which gathering force in its progress, is checked by neither difficulties nor danger, and forgets or despises all considerations of general tranquillity, which is the very object of the appeal to arms, and to which victory is merely instrumental. The pursuit of interest, on the other hand, is a sober principle, that computes the costs and consequences of war, and stops in time; and even, when not regulated by the universal maxims of relative justice, is much less dangerous, because more temperate, than the other.

II. The conduct of war. If the cause of war be justifiable, all the means, necessary to the end, are justifiable also. On this principle we defend those extremities to which war usually proceeds: for since the contest is between parties who acknowlege no umpire, and excludes every supposition that would limit the operation of force, it can terminate only in the destruction of the opposing force. The licence of war does not, however, authorise acts not conducing to the termination of hostilities. Hence all cruelty that serves only to exasperate the feelings without leading to the submission of the enemy, such

as the slaughter or torture of captives, the violation of women, the demolition of public buildings, or of works fit neither for annoyance nor defence, is prohibited, by the practice of civilised nations and the law of nature, as having no tendency to accomplish the object of war, and as containing that, which in peace and war is equally unjustifiable, gratuitous mischief.

Other restrictions are imposed on the conduct of the belligerents by the laws of war; which, forming a part of the law of nations, rest, as such law does, their authority on the fact of their being established, no matter when or by whom, and on the general utility which results from their observance; and as the regard that is paid to them must be universal or none, the whole mischief that ensues from their neglect will be justly chargeable on the party first disregarding them. For instance, by the laws of war, poison and assassination are prohibited. But if it be lawful to kill an enemy at all, it would seem by the law of nature as fair to do so by poison as by the sword; by the secret assassin as by open assault; for if it be said, that the enemy may guard himself against one species of attack, but not the other, it may be answered, that we have the same right to destroy the defence of a party as the party himself. Still, if we follow the violation of the international law through all its bad consequences, we shall find that the mutual licence, which such attempts would give for retaliation, would so fill each party with suspicion, that the calamities of war would be aggravated tenfold without necessity, or even the slightest advantage to either side. Hence, we may fairly reprobate such expedients, even by the law of nature, as so many mischievous transgressions of social laws, actually conducing to the general good.

The two limitations, then, by which the licence of war is confined, are, 1. not to commit any acts of hos-

tility, except such as lead to a speedy termination of the contest; and, 2. to respect the regulations of international law, by which the calamities of war are mitigated without impairing the power and safety of the belligerents.

Long experience seems to have taught European nations, that a standing army can alone be opposed successfully to a standing army, at least where the numbers approach at all to an equality. Since the disappearance of the Roman legion, the first standing army was formed by Charles VII. in France; and the general adoption of the system by other states affords the best proof of the superiority it was considered to possess. The truth is, the closeness, regularity, and quickness of their movements; the instantaneous, and almost mechanical obedience to orders; the sense of personal honor, and the familiarity with danger which belong to a disciplined and veteran soldiery, give such firmness and intrepidity to their approach, such weight and execution to their attack, as are not to be withstood by the loose ranks of newly-levied troops, liable by their inexperience to be thrown into confusion, and in whom fear is constantly augmented by novelty and surprise. It is possible that a militia, with a great excess of numbers, and a ready supply of recruits, may sustain a defensive or a flying war against regular troops: it is also true that any service, which keeps soldiers for a while together, and inures them by degrees to action, transforms them in effect into a standing army. But on this plan almost a whole nation is required to repel an invader; besides, a people so unprepared must always have the seat, and with it the miseries, of war, at home, from their inability to carry their operations into a foreign country.

From this superiority of a standing army, it follows, that it is unsafe for a nation to disband its regular troops, while neighboring nations retain theirs.

But even on the ground of economy, a standing army ought to be kept up; as it provides the best for the public service at the smallest expense, at least, if any large force be requisite at all. For not only are low employments incompatible with the duties of a soldier, but even his profession unfits him for other occupations. But were it otherwise, it is better that, of three peasants, one should be a soldier, and the other two remain to till the ground, than that all three should mix the business of a camp with a farmer; for in one case the country obtains one complete soldier, and two industrious husbandmen; but in the other it receives three raw militia-men, who are also three idle peasants. Besides, as the emergencies of war wait not for seasons, if no standing army be ready for immediate service, the reaper must leave the field in harvest, and the ploughman in seed-time; and thus the food of a whole year may perish for the want of one month's labor. A standing army is therefore more effectual and cheaper than a militia, because it possesses more power, and takes less from productive industry.

There is yet another distinction between a standing army and a militia, deserving attentive consideration. When the state relies, for its defence, on a militia, it is necessary that arms be put into the hands of the people at large. The militia itself must be numerous, in proportion to the inferiority of its discipline, and the defects of its constitution. Moreover, as in such a militia, they who have served a certain time are replaced by fresh draughts, a greater number will be instructed in the use of arms, and will have been occasionally embodied together, than are actually employed. Now, from this general diffusion of the military character, it appears doubtful, whether any government can be long secure, where the people are acquainted with the use of arms, and accustomed to resort to them. Every faction will find itself at the head of an army, every disgust will excite commo-

tion, and every commotion become a civil war. Nothing, perhaps, can govern a nation of armed citizens but that which governs an army, despotism. I do not mean that a regular government would become despotic by training up its subjects to the exercise of arms, but that it would, ere long, be forced to give way to despotism in some other shape; and that the country would be liable to what is even worse than a settled despotism,—to perpetual revolutions, and the successive tyranny of governors, rendered cruel and jealous by the danger and instability of their situation.

The same purposes of strength and efficacy, which make a standing army necessary at all, make it necessary, in mixed governments, that this army be under the direction of the prince: for, however well a popular council may be qualified for the offices of legislation, it is altogether unfit for the conduct of war; in which success usually depends on vigor and enterprise; on secrecy, despatch, and unanimity; and a quick perception of opportunities, and the power of seizing every opportunity immediately.

It is likewise necessary that the obedience of an army be as prompt as possible; and as the most prompt obedience is that of will, the head of the government ought to possess the appointment and promotion of the officers: for a plan is most likely to be executed with zeal and fidelity, when the party, who issues the order, can choose the instruments and reward their services. Besides, if in a mixed government the power to officer the army were placed in the democratic part of the constitution, it would so overbalance all regal prerogative, that little would remain of monarchy but the name, and even that, probably, would not continue long.

But all these advantages of a standing army are not unaccompanied with danger; for separated as soldiers are from their fellow-subjects, and linked to each

other by habits of society, and dependent, as they feel themselves to be, on the head of the government, they present an aspect little favorable to public liberty.

The danger, however, may be diminished by maintaining as much alliance of interest, and as much intercourse of sentiment, between the military part of the nation and the other orders of the people, as are consistent with the discipline of an army. Hence, if the officers of the army, on whose disposition towards the commonwealth a great deal may depend, be taken from the principal families of the country, and encouraged to establish families of their own; and admitted to seats in the senate, to hereditary distinctions, and to all honors and privileges compatible with their profession, they will obtain such a share in the general rights of the people, and be so engaged on the side of public liberty, as to afford a reasonable security that they cannot be brought, by any promises of personal aggrandisement, to assist in the execution of measures to enslave their posterity, their kindred, and their country.

THE END.

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